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ABSTRACT

Curricular materials and resources for use in the education and training of students and caseworkers on permanent planning for children in foster care are compiled in this volume. Materials are arranged in modules, which in turn are grouped into two units. The first unit, dealing with direct services to parents of foster children, contains seven modules. Module 1.0 presents in narrative form an example of permanent planning casework, and module 1.1 offers an overview of permanent planning. Module 1.2 on decision making and module 1.3 on the role of the permanent planning worker are said to be applicable at many points in casework. Modules 1.4 (assessment and treatment program design), 1.5 (service agreements in permanent planning casework), and 1.6 (documentation and evaluation) are more specific to the series of casework tasks involved in working with parents of children in foster care toward returning the child home. The second unit, on legal skills, contains seven modules. This unit is designed to help social workers learn about their state's handling of termination of parental rights, learn how to read and understand legal writing, and learn to relate their knowledge in social work to legal constraints. Topics of the modules are: (2.0) the Hoover family: a termination of parental rights case, (2.1) the juvenile courts and termination of parental rights, (2.2) termination of parental rights statutes, (2.3) case law, (2.4) preparing evidence for termination of parental rights proceedings, (2.5) the social worker on the witness stand, and (2.6) glossary of legal terms. (JMB)

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Permanent Planning in Foster Care

Resources for Training

PS 010874

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Many people helped put the modules together. Among the principal contributors, a primary collaborator has been Mark Hardin of the Institute staff who wrote several of the articles and gave advice on others. He trains workers in state law relating to termination of parental rights across the country, is chief editor of the state legal practice manuals on foster care being written through the Permanent Planning Project, and teaches a course in child welfare and the law at Portland State University's School of Social Work. Linda Dreyer, Project Director, also acted as reviewer and advisor. Frank Mussell, an attorney on the staff of the Western Federation for Human Services working with Oregon's Children's Services Division, has worked extensively in training practicing caseworkers in many legal skills, especially those dealing with termination of parental rights. He wrote some of the material included here, and many of the ideas for material came from his notes, conversation, or watching him in action. He also agreed to read drafts of our material as a critical reviewer. Jacquelyn Dvorak, Field Consultant on the Permanent Planning Project and an experienced permanency planning caseworker, contributed greatly to the practical, how-to-do-it pieces in the Direct Service unit, and reviewed much of the other material. Lynn Thompson, Associate Professor at Portland State University's School of Social Work, made a review of current social work literature and contributed the insights gathered from this review, along with his own, to the module on The Role of the Permanent Planning Worker. Special thanks go to Arthur Emlen, Director of the Regional Research Institute for Human Services, who gave supervision and support to the work and shared generously with us his understanding of child welfare issues in this country.

Vic Pike, Permanent Planning Project director and founder of the Oregon Project, is the ultimate source of much of this material, and deserves special thanks for his patience with those who seek to capture elusive ideas. Dave White, Denise Case, Jan Knowles and Lynn Frohnmayer, caseworkers originally involved in the Oregon Project, deserve credit for sharing their methods and experience. Jan Knowles and Lynn Frohnmayer, along with Pat Gustaveson, trainer with Group Child Care Consultant Services at the University of North Carolina, served as critical reviewers of much of this material. Ms. Gustaveson gave us encouragement to proceed during the early stages of our work, and brought her extensive experience in training to help us with our materials. Another critical reviewer was Elizabeth J. Stewart, Assistant Attorney General in Arizona assigned to the Department of Economic Security, who argues termination of parental rights cases for the state regularly and works extensively with permanent planning caseworkers in preparing cases for court. She encouraged us to believe that it is possible to demystify the law and that it is worth doing.

Finally, the editors wish to acknowledge one another and Katie Liedtke, program coordinator at the Regional Research Institute, who managed the typing and proofreading with humor and dispatch. Susan Downs, technical writer for the Institute, was unfailing in her patience, ability to turn a phrase, and admirable in her desire to state simple things simply. Catherine Taylor, media coordinator, knows how to design things with style and can keep a cool head in the face of difficulty. Her experience in designing educational materials was very valuable to this undertaking.

The staff of this project are grateful to Dr. F. Pauline Godwin and Helene Levy of the Administration for Public Services for their continued support and encouragement during the grant period, as well as to Frank Ferro of the Children's Bureau which now administers the child welfare training program.

ABOUT THIS BOOK

This volume, with a companion called Permanent Planning in Foster Care: A Guide for Program Planners, represents the final product of a national child welfare training grant (84-P-90555/0-01) that the Regional Research Institute for Human Services at Portland State University received from the Administration for Public Services during FY 1977-78. The project was designed to meet a critical educational gap in the field of child welfare for both students and practitioners, at the same time that it augmented the Institute's national technical assistance project in disseminating permanent planning strategies and techniques under contract with the Children's Bureau, Administration for Children, Youth, and Families.

This volume represents completion of one of the grant's objectives, the development and dissemination of curricular materials for use in the education and training of students and caseworkers on permanent planning for children in foster care.

Another objective of the grant was to provide intensive training in the elements of permanent planning to managers of child welfare programs, social work faculty, and other child welfare professionals. Three two-week residency programs were held on the campus of Portland State University, during which 21 selected participants were involved in training programs that reviewed concepts and direct service methods in permanent planning, statutory and judicial considerations, as well as planning and management of service delivery. Most of the participants had been charged with implementing permanent planning in their individual states, and one of their greatest needs was information about the mechanics of designing a permanent planning program. The Guide for Program Planners, which contains material used in several of the training sessions, was written in response to that need.

Both volumes should be considered a compilation of the state of the art in educating practitioners for permanent planning. It is hoped that they will stimulate the design and dissemination of more and different training materials for use with a wide variety of audiences.

How to Use the Material

Users of this volume will quickly become aware that it is not a training manual, but a compilation of training resources. A variety of materials is included, ranging in approach from the theoretical to the practical, and in format from readings to exercises and worksheets. Our aim has been to produce items which can be of use in different situations where trainers and instructors seek to introduce the concept of permanency planning into existing curriculum. We have included, throughout the volume, suggestions for instructors or trainers who use these materials. These are always found on tan pages, like the one you are reading now, which precede each module.

The single most important suggestion we have for users of this volume is this - tear it apart, mix materials found here with instructional materials and strategies you already know to be useful, tailor it to your own needs and those of your students. The binding on this volume is not intended to be permanent; a more appropriate package would be a looseleaf notebook which would encourage you to add to or delete material as you develop your own training program or course. It is particularly important that these general materials be adapted to the laws of your state and the practices and procedures common to your state or local agency charged with foster care and adoption programs.

All of the materials are arranged into modules, each of which deals with one topic. The modules are organized into two units: I., Direct Services, and II., Legal Skills. In developing this format, we found useful a small volume titled The Instructional Module: Its Uses for Beginning Teachers in Undergraduate Programs in Social Welfare, by Kay Dea. While all the items in one module are designed to work well together, they need not be presented together. Each piece is intended to stand alone, so that an instructor can use only what he needs from a module or from the entire volume.

The Tan Pages

The tan pages at the beginning of each module show what is included in that section and specific directions to the instructor on its use. Leafing through this volume and glancing at each of these pages is a good way of getting a notion of what is included. They present information under three headings: Teaching Resources, General Learning Objectives, and Teaching Strategies; some modules include a fourth heading, Further Readings.

Teaching Resources. Listed here are the training resources included in the module, such as articles, charts, exercises, and discussion questions. The subheading Other Resources lists helpful material not included in the module. We have not attempted a comprehensive search for materials, but have reviewed and evaluated those most relevant to permanent planning as they have come to our attention. We hope to continue to seek out new materials and to update this listing, and welcome suggestions for inclusion. Unless otherwise indicated, the teaching resources are available from the publishers. In some instances guest speakers - such as lawyers or caseworkers experienced in areas covered by the module - are also identified as resources. Using guest speakers is in these cases discussed further in the section on teaching strategies.

General Learning Objectives. Listed here are skills, attitudes, and knowledge that the materials in the module address. Note that these objectives are very general. It is left to the instructor, or to the student, to determine the level of competency they will draw from a training experience, and the conditions under which an objective will be met.

Teaching Strategies. Included in this section is a discussion of how the various items in the module can be used to help students reach the learning objectives. The scope of the National Child Welfare Training Grant under which these materials were developed did not permit us to field test in all of the various settings where training or instruction related to child welfare might occur. The teaching strategies we have identified come from limited field testing, or from a familiarity with the material presented. Feedback on courses and training sessions which use these modules will help us define these strategies in the future.

In nearly all cases, the articles and exercises could be self-instructional. An interested student should be able to absorb much of the material simply by reading the articles, doing the exercises, and using the suggestions in the reference lists to pursue subjects further.

The Units

The two general topics covered in the units, direct services to parents of foster children and background in the law of termination of parental rights, both require certain skills and knowledge peculiar to permanent planning, and were chosen as topics for that reason. They do not cover every aspect of permanent planning, only those in which special training material seems most needed. For those interested in a more comprehensive coverage of permanent planning we suggest another publication of the Regional Research Institute, Permanent Planning for Children in Foster Care: A Handbook for Social Workers, by Vic Pike, et al. Some of the material from the Handbook is included in the modules, and references are made to it where appropriate. The Handbook is intended as a practical guide and is organized for easy reference, while the materials in the modules are particularly designed for use in class or other training environments.

Unit I. Direct Services. The six modules in this unit touch upon many topics which arise frequently in discussions of what is unique about permanent planning casework. Module 1.1 pulls together materials useful for an overview or introduction to these topics. Module 2 on the Role of the Permanent Planning Worker and Module 3 on Decision-Making deal with aspects that can be applicable at many points in casework. Modules 4, 5, and 6 are more specific to the series of casework tasks involved in working with parents of children in foster care toward returning the child home. This series of modules includes exercises which use the three parts of the Turner/Sears Case, presented in Module 1.0. This series of exercises provides a good organizer for a training session. Decision-making is also inherent in the use of the Turner/Sears Case, and the material in that module can be applied to the case at several points.

Unit II. Legal Skills. The purpose of these modules is to help social workers, both students and practitioners, to work effectively with the legal system and, more specifically, to learn about their state's handling of termination of parental rights. The modules can help students learn how to read and understand legal writing, and how to relate their knowledge in social work to legal constraints. They should be able to read and understand articles in law journals, statutes, appellate opinions, and other legal writings by and for lawyers (Modules 1-3). Conversely, they should be able to take what they know as professionals in child welfare and reformulate it so that it has value and meaning in legal settings (Modules 4 and 5). Together, the modules introduce students to most of the legal issues they can expect to encounter in handling a termination of parental rights case, from understanding how their court operates, to the state's statutes and case law governing termination and, finally, to organizing the case record and preparing testimony for court.

Students who want to know the statutes governing termination of parental rights in their state, or the specific rules of evidence used in their courts, need supplemental material. Instructors can make the material more immediate to the student's experience and increase their knowledge of the subject considerably by providing state statutes, appellate decisions, child welfare case histories, etc., which are specific to the student's state.

The material in these modules may be useful to lawyers asked to speak on termination of parental rights to groups of social workers. Attorneys appearing in class as guest speakers often are unsure about how to present their material so it is accessible to non-lawyers. The outlines and exercises in these modules can be used as a starting point by lawyers in preparing their materials; the article on evidence, for example, could be reworked by a local attorney to reflect local practice in evidentiary matters.

Some of the material here may have uses other than training in termination of parental rights. The skills necessary to read a statute do not change, whether the subject of the statute is termination of parental rights or something else. Hearsay, the juvenile court system, and understanding case decisions, are other topics which can be applied to many areas of juvenile law particularly.

One final reminder - not all of the material will be useful to every audience. The article on cross examination, for instance, may be useful mainly to caseworkers who know they will testify in court. Other material, such as suggestions for reading, evaluating, and writing model termination of parental rights statutes or compiling a case law compendium, may be more useful to graduate students undertaking a term project.

However they are used, we hope that these modules will have the effect of demystifying the law for professionals outside the legal system.

Social workers too frequently allow themselves to feel intimidated, incompetent, less expert, in the face of legal assurance. Lawyers appear in possession of arcane knowledge which only they can understand. These modules can introduce students to legal writing and the legal approach to human service issues, so they can grasp legal principles relevant to their field and begin to relate legal imperatives to their own case planning decisions.

The glossary which concludes the legal unit defines legal terms frequently encountered in activities relating to termination of parental rights. All or a selection of the definitions included would be useful reference materials to workers engaged in permanency planning. It can also be supplemented and altered to reflect terms in use locally.

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THE TURNER/SEARS CASE

The Turner/Sears Case is an example of permanent planning casework. Its characters and events are representative of many encountered during the Oregon Project. The case narrative is chronological, with breaks at three places in the sequence. This "stop action" device provides an opportunity for the learner to encounter new information in much the same way the caseworker does in managing a case.

The breaks reflect major turning points in the case, situations where the caseworker and agency must make decisions and plan casework activities.

Exercises and discussion questions which can be used with the Turner/Sears Case are found in the following modules:

- Module 1.2, Decision Making;
- Module 1.4, Assessment;
- Module 1.5, Service Agreements; and
- Module 1.6, Documentation and Evaluation

Note: All names used in case examples are fictitious.

THE TURNER/SEARS CASE PART I

On July 5, you receive a case from your supervisor. It involves an eighteen month old girl, Annie Mae Turner, who has just been placed in foster care. The child was brought to the agency by her maternal uncle, Mr. Roy, and his wife. Robert Roy signed a petition which alleges that:

> "The person having legal custody of said child, her mother, Nancy Roy Sears, has failed to provide her with the care, guidance, and protection necessary for her physical, mental, and emotional well being by reason of the following facts:
>
> The mother leaves said child in the care of other persons for prolonged periods without notice of her whereabouts, notice of her time of return, or adequate monetary or other provisions for said child during her absence, and specifically, she has left said child in the care of her maternal uncle and spouse since the middle of March, and has failed and neglected to provide any of said child's needs during that period or to make contact with said child during that period to date."

Additional background on the case is provided by the Juvenile Court counselor who was present when the Roys brought Annie in. The aunt and uncle complained that they couldn't control the child, that she seemed to be bright, but communicated only by crying and screaming. The court counselor confirmed the impression of an active, aggressive child, and reported that she cried off and on throughout the time the Roys were with the counselor.

A few days later you visit Annie in the foster home. You find the child to be active and alert, but obviously difficult to control. She speaks only a few understandable words, and tends to express her needs and wants with outbursts of screaming. The foster parents report that she has settled down a little in the few days she has been in the home, is sleeping through the night, and beginning to play with their four year old son.

You also pay a visit to the Roys and find them very willing to talk about Annie and her mother, Nancy Roy Sears. They don't know where Mrs. Sears is now, and report that she has been absent almost continually for the past six months. At one point the previous spring, the Roys had discussed adopting Annie, and Mrs. Sears had said she might consider relinquishing the child to them. Since then, however, Mrs. Sears has been unwilling to discuss this further, and the Roys are discouraged by the mother's repeated absences. Annie's behavior, they report, has deteriorated in the meantime, and they claim that this is a result of the mother's unreliability. Mrs. Roy is now pregnant, and no longer feels able to care for such a difficult child.

Mr. Roy says that his sister has always been the black sheep in the family, and demanded more than her share of attention by getting into trouble, even when very young. Their father is a truck driver, and their mother a housewife, occasionally employed doing housecleaning. Nancy was married immediately after her graduation from high school, and divorced after four years. Her second marriage six months later was to Neal Sears. Nancy and Neal separated after two years, but have never been divorced. Nancy then began living with Steve Turner and became pregnant with Annie. Turner left Nancy when Annie was about nine months old, and the Roys believe that he is now married. Since Turner left Nancy, she has been drifting, and Annie has spent most of the intervening months with relatives.

Nancy Roy Sears is now twenty-four. Over the past few years, and especially over the past six months, she has been extremely unstable, moving frequently, holding down temporary positions in bars and restaurants, and going on frequent drinking binges. Mrs. Roy believes that she has been using drugs as well.

Two days after you interview the Roys, Mr. Roy calls to say that Mrs. Sears has returned. She called the previous evening, said she had no place to live, and asked if she could live with them and be given another chance. Mr. Roy said that Mrs. Sears wants Annie back, and is eager to talk to you.

On July 12, you have your first meeting with Nancy Sears at the Roy home. She is an extremely nervous young woman, but obviously anxious to please and seems genuinely motivated to get Annie back. She admits that she has abandoned Annie to relatives since the middle of February, and that she had frequently left Annie in the care of the natural father, during the time that she had been living with him, even though he had a serious drinking problem. She openly admits that she herself has been drinking frequently and using drugs. She says that she is not emotionally stable and does not know how to take care of Annie. She claims that she never really loved Annie as an infant, but that she loves her now. She doesn't want to consider relinquishment. She states that she doesn't get along with the Roys, and agrees that it is important that she be able to provide a home for Annie. You agree that you will help her in her efforts, make an appointment for her to meet with you the following week, and set up a time for her to visit with Annie.

THE TURNER/SEARS CASE PART II

Over the next six weeks you work with Nancy Sears toward the goal of returning Annie to her care. Although she continues to express her desire to establish a home for Annie, progress is slow.

At your second interview, you and Nancy Sears agree to several things: first, that she will see Dr. Duncan, the psychologist whose services are available to your agency for an evaluation; second, that she will begin to look for an apartment that is a suitable place for Annie to visit; and third, that she will approach her former employer about resuming her job as a waitress. At your next three meetings Mrs. Sears can report no real progress on employment or housing, since the restaurant has no job vacancies at this point, and she is reluctant to look for housing without adequate income. Much of your meeting time is spent in talking about her disagreements with the Roys, and her drinking and use of amphetamines over the past few years. Mrs. Sears repeatedly states her desire to break these habits and settle down.

During this period you are also present when Mrs. Sears visits with Annie. The first of these visits occurs in the Roy's home and is a disaster, since Annie cries continually, apparently confused by the presence of both Mrs. Roy and her mother. Subsequent visits occur at the home of the foster parents, where Annie appears more at ease and is much quieter. Mrs. Sears is very stiff with her daughter and extremely nervous during each meeting. By the third visit, however, you can see some progress, and Annie greets her mother with some enthusiasm. During your meetings with Mrs. Sears you are able to identify some minor changes that will help her improve her interactions with Annie.

On August 6, you speak by phone with Steve Turner, Annie's natural father. Turner explains that he is now married, and has not seen Nancy or Annie for at least six months. He says he figures Annie should stay with Nancy, and that he doesn't want to be involved. He says he'll keep you notified of any change of address.

On August 10, you accompany Mrs. Sears to a court hearing on the dependency petition. She appears quite distressed by the public airing of her neglect of Annie, and talks with you further about her desire to "get herself together."

Soon after this hearing, you receive the report from the psychologist. He describes Mrs. Sears as "an extremely hypertonic, even manic woman with a tremendous press for speech." He says: "There has been no evidence of stability in her life or of any ability in her to make a commitment and sustain it for any period of time." He administered the MMPI which essentially describes her as a person who functions at times in a somewhat sociopathic way and at other times in a grossly manic, perhaps even prepsychotic way. He goes on to say: "It is my impression that this woman has functioned as a cyclathymic personality for a period of time. By this I mean a manic-depressive most typically in the manic phase." He states also that he has some strong reservations as to her reliability. He recommends that the agency require some evidence of her ability to sustain herself for a reasonable length of time before even considering return of the child.

On August 24, Mrs. Sears fails to show up for her scheduled meeting with you or for her visit with Annie. She calls the next day, however, to report that she has moved in with Neal Sears, her legal husband. She reports that Mr. Sears has a steady job driving a truck and that he makes $300.00 a week. He has a ninth grade education. They are living in a rented, 2 bedroom house, which Mrs. Sears describes as "pretty nice." She wants to know what else she has to do to have Annie back.

THE TURNER/SEARS CASE PART III

During September, October, and November, Nancy and Neal Sears cooperate with the agency in a treatment program to prepare them to reassume custody of Mrs. Sears's daughter, Annie, who is still in foster care. Early in September, you establish an agreement with the Sears which states that:

1. Annie will visit Nancy in the Sears's home one morning each week. The agency will help with transportation when Neal Sears is unable to pick up or deliver Annie.

2. A homemaker will be present for at least part of each of these visits, to help Nancy Sears learn how to better care for Annie.

3. Nancy and Neal Sears will pay partial child support.

4. Nancy and Neal Sears will meet with you weekly to discuss progress toward the treatment program goals.

Nancy Sears is talkative and eager as you work out the details of the treatment program. She seems terribly anxious to show that she can be a competent mother, but realizes that she doesn't know how to deal with her daughter. Neal Sears, a tall, stocky man, is quiet and passive during these initial interviews. He assents to everything Mrs. Sears suggests, and appears to be quite bowled over by her sudden reentry into his life.

Visits and support payments are accomplished on schedule during September and early October. Some minor problems arise around transportation for Annie. Mr. Sears claims that he is late to work if he picks up Annie to take her to visit her mother. An aide from your agency helps with transportation, as does the foster father. Mrs. Sears remarks frequently in her meetings with you that the homemaker is nice, and has given her much help in learning how to care for Annie.

At a review hearing in mid-October, the judge approves your plan to increase the frequency of visits to twice a week, the second occurring on Saturday mornings when Neal Sears is home. The judge also requires the amount of child support payments to be increased, and that Neal and Nancy Sears attend parenting classes. In response to the psychologist's evaluation he additionally requires that Nancy Sears begin counseling sessions with the county mental health clinic as soon as this can be arranged. Neal Sears appears increasingly sullen and uncooperative following the hearing, and he admits that he resents making the support payments.

On Saturday, October 25, you visit the Sears in their home while Annie is there for a visit. Neal Sears is ill-at-ease and remote with Annie. Mrs. Sears, though stiff and nervous, makes a genuine effort to play with her daughter. She reports that she continues to enjoy visits from the homemaker. On November 7, she meets with the counselor from the mental health clinic, but she fails to keep appointments scheduled for the following weeks. The Sears attend two of the parenting classes, but Mr. Sears fails to attend the third class, and neither of them attend after November 17. On November 24, they fail to keep their regular appointment with you, and on November 26, and again on November 29, no one is at home at the time of Annie's regularly scheduled visit. The foster parents are upset with this disruption of Annie's schedule. You finally locate Neal Sears at home on December 6. He says Nancy has left him and gone to live with another boyfriend. He angrily claims that he is finished with Nancy, and never wants to see Annie again. Repeated inquiries to friends and relatives prove fruitless. At the beginning of January, Mrs. Sears is still missing. On January 6, you finally get word of her from her brother. Several days later, she returns your call. She is distraught, says she has had a hard time, but that she still wants Annie. She refuses to tell you where she is, but promises to keep in touch with you through her brother.

THE TURNER/SEARS CASE PART IV: A POSTSCRIPT

This case is a composite of several handled by workers during the Oregon Project. In writing this narrative, however, we did identify closely with one particular case, and the relationship between a patient and persistent caseworker and a mother who was determined to take care of her child. This postscript relates the outcome of the Turner/Sears case, with a strong dose of fact blended into the fiction.

On January 15, the agency files a letter to the court, reviewing the events of the past months, and recommending a termination of parental rights if Nancy Sears can not show steady progress toward resuming care of Annie within six months. Mrs. Sears comes to the agency on January 18. Confronted with the facts stated in the court letter and obviously exhausted by six weeks of moving around and heavy drinking, she breaks down, very upset with the possibility of loosing Annie. But Mrs. Sears continues to be anxious to do whatever she should to be considered a fit mother. At the Review Hearing on January 27, the court orders Mrs. Sears to attend additional parenting classes, to engage in regular counseling, and to formalize her separation with Neal Sears. From February to June, Mrs. Sears makes steady progress, faltering only when she becomes too eager to succeed. For example, Mrs. Sears enthusiastically obtains counseling at two separate mental health centers. She surpasses the expectations of the agency and court by moving quickly to divorce Neal Sears, and to gain his relinquishment of rights to Annie. In February, she moves from her brother's apartment to a motel, and in June, when longer visits from Annie are planned, quickly finds an apartment. Counselors and instructors in parenting classes report that Mrs. Sears is becoming more at ease, and realizing the necessity of a commitment to Annie. Employment continues to present problems, but Mrs. Sears is able to maintain herself with welfare and some help from her family.

During the summer months, Annie visits with her mother overnight and for weekends. In August, when Annie's placement is disrupted by the foster family's plans to move out of town, the agency decides to return Annie to the care of Mrs. Sears on a trial basis. The transition is relatively smooth, and with continued counseling, and supervision and homemaker support from the agency, Mrs. Sears and Annie make out fairly well. Shortly before Christmas, eighteen months after Annie was originally placed in care, formal custody of Annie Mae is transferred to her mother, Nancy Sears.

TEACHING RESOURCES:

In this module:

- Reprint: "Permanent Planning for Foster Children: The Oregon Project," by Victor Pike
- Overview of Permanent Planning: Points for Discussion
- Table I: Alternative Permanent Plans for Children in Foster Care
- Table IIa: Typology of Grounds for Termination (according to Oregon law)
- Table IIb: Typology of Grounds for Termination (to be filled out)
- Table III: Decision Tree, with Narrative Description

Other Resources:

- Filmstrips: "His Name is Today" and "Everybody's Children," available from the Regional Research Institute for Human Services, Portland State University, P. O. Box 751, Portland, Oregon 97201

GENERAL LEARNING OBJECTIVES:

The materials in this module are designed to help the learner:

- Understand that permanent planning is basically good, goal-oriented casework, with the goal being to achieve for each child a permanent home.
- Identify the kinds of permanent plans considered for children in foster care, and the casework activities and statutory basis necessary to achieve these plans.

TEACHING STRATEGIES:

This module is intended to present an overview of permanent planning, and to introduce the more specific topics covered in the remaining modules.

The material is also well suited for an audience interested in only a brief introduction to permanent planning.

The article "Permanent Planning for Foster Children: The Oregon Project" by Vic Pike, describes the practices developed by the workers in Oregon between 1973 and 1976. Some of this same information is presented in the filmstrip "His Name is Today." The filmstrip records caseworkers from the Oregon Project talking about their experiences and techniques, and has the added impact of such first hand accounts. Both of these pieces make excellent introductory material for any audience in social work. The second filmstrip listed above, "Everybody's Children," is intended for a more general audience - those citizens and professionals who may become involved in permanent planning efforts. Both filmstrips are about fifteen minutes in length, and are available on a loan basis.

Either of these filmstrips, or Pike's article, can provide an introduction to the major elements of permanent planning. Points for Discussion, following Pike's article, gives some specific questions or guidelines for further investigation to complement this general overview. Question 1 requires the learner to examine the elements of permanent planning as displayed on Table I (page 1.1.11) and to identify those currently at work in the state or locality. Note that Table I, like those that follow, is laid out so that it can be used as the master for an overhead transparency. Questions 2 and 3 ask learners to discuss some of the findings of the Oregon Project, and to apply these to their own state or local child welfare agency. Question 4 asks learners to identify the statutory grounds for severance or termination of parental rights in their own state, and to fill in this information on Table IIb; Table IIa displays the Oregon Statute in this same format as an example. (Specific guidelines for analyzing your own state statute are provided in Module 2.2. You might consider giving several students Question 4 as a special project, with Module 2.2 as a resource for their investigation.)

Questions 5 and 6 relate to Table III, The Decision Tree. This figure is described in the narrative which follows. Note that the Decision Tree can act as an introduction to the modules which follow in this unit. The decision points, reflected by diamonds on the Decision Tree, are discussed in Module 1.3. Students seeking to answer Question 5 by means of an investigation may wish to use this module as a resource. Casework or legal activity, as reflected by squares, is covered primarily in Modules 1.4, 1.5, and 1.6, and students seeking more information about such activities should be referred to those modules.

PERMANENT PLANNING FOR FOSTER CHILDREN: THE OREGON PROJECT

by Victor Pike

Reprinted from Children Today, Vol. 5, No. 5, Nov.-Dec. 1976, with the permission of the author and the Children's Bureau, publisher of Children Today.

Permanent Planning for Foster

When April was 18 months old, her young, unwed mother suffered a psychotic episode and, in an effort to "spare the child from degradations of the devil," stabbed April and held her under a hot shower. April survived and, after a long hospitalization, was placed in foster family care. The mother was committed for a year to a state hospital. After her release, the child welfare agency caseworker helped her to receive a variety of community services, including psychiatric treatment, job training, health services, financial aid and public housing.

When the caseworker cautiously initiated visits between the child and mother, April cried and clung to the worker. Later, she learned to run and hide whenever the mother visited the foster home. Gradually, however, the child began to accept the visits, although she never responded warmly to her mother.

After the mother had received a year of treatment, the worker began to consider the possibility of returning April to her—but problems persisted. April began to have nightmares every night, and her foster mother would rock her until her screaming stopped and April fell asleep. As the situation appeared to approach an impasse, the mother experienced another psychotic episode and was hospitalized for three months.

By the time of her mother's release, April was three years old and had been in foster family care more than half of her life. April began visiting her mother again, and her nightmares continued.

After consulting with hospital psychiatrists and private psychologists, the worker arranged psychiatric examinations for the mother and April. All involved professionals concurred that while the mother would be capable of some degree of self-support, she would never be intact enough to care for April even minimally.

Agency and community efforts to rehabilitate the mother were well documented. A petition to terminate parental rights was filed, expert witnesses testified and the court terminated the legal rights of April's mother. At age 4½, April was free for adoption.

The foster parents, who wanted to adopt April, explained the court decision to her. Although there was little visible reaction from April, there were no nightmares that night—nor on succeeding nights. In fact, April, who was adopted by her foster parents, has never had another nightmare.

April's case was one of 509 which the Children's Services Division of the Oregon State Department of Human Resources had selected for special attention as part of a 3-year demonstration project funded in 1973 by the Children's Bureau, OCD. The project—Freeing Children for Permanent Placement—emphasized aggressive planning and casework techniques to achieve permanent homes for children like April who were adrift in long-term foster care.

The Oregon Project

One of three possibilities can usually be considered when making permanent plans for a child in foster care: returning the child to his biological parents; freeing him for adoption through the termination of parental rights; or contracting for a formal long-term foster care arrange-

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Children: The Oregon Project

by Victor Pike

ment. Since proceedings to terminate parental rights were foreign to many circuit courts, we decided to focus our efforts on working toward this goal. In Oregon, existing appellate court decisions had reversed about 40 percent of the cases appealed, and line staff members knew little about properly preparing cases for court. In addition, we felt that termination of parental rights was a "heavy" matter with which state attorneys and judges were reluctant to deal.

After funds for the project were received in November 1973, 2,300 children in foster care were screened according to three criteria. These were that the child must have been in foster care for one year or more; that the child was unlikely, in the referring worker's judgment, to return home; and that the child was considered to be adoptable. More than 500 children were accepted for the project, fewer than those meeting the criteria but the maximum number possible under the protected caseload arrangement. Caseloads were limited to 25 children per worker (as opposed to the usual caseload in Oregon of 50 to 60 children per caseworker). Fifteen of the state's 36 counties participated in the demonstration project.

We believed that children involved in termination of parental rights proceedings should have separate counsel. Consequently, the Children's Services Division negotiated a contract with the Metropolitan Public Defender's office in Portland for the services of a full-time attorney, David Slader, and supporting staff, to represent the children in this project. It was recognized that the counsel had to be an independent legal agent, representing neither the project nor the Children's Services Division.

To meet the grant requirement that the project be evaluated by a third party, a contract was arranged with the Regional Research Institute for Human Services of the Portland State University School of Social Work. The Institute, directed by Arthur Emlen, provided the structure and direction for screening activities and collection and analysis of data.

The goals and casework tactics for each case were defined, and the project began with concentrated efforts to locate absent parents and to assess the available parents' capacities to provide care for their children. Despite the screening criteria bias toward identifying cases suitable for termination of parental rights proceedings, project staff members were convinced that the primary goal of permanent planning should be the reuniting of biological families. Thus, an exhaustive effort was made to accomplish this goal before steps were taken to resolve cases through termination of parental rights. These efforts resulted unexpectedly in a surprising number of children being returned home—26 percent have now been reunited with their biological families.

One of the children returned home was Chris, a 9-year-old boy who had been in a foster family home since age two, when he was sexually abused by his father. The father had been convicted and sent to prison.

Chris' mother, who was Japanese, had married the father when he was stationed in Japan and Chris had been born shortly after their return to the United States. Further investigation and a visit to the mother's home revealed that she had divorced Chris' father after his conviction and was now remarried, had a child and seemed content. Reports from the prison indicated that the father was seriously disturbed and was not anticipating parole in the near future.

Chris had been meeting with his mother about three times a year, when she initiated a request to the agency. Although she had been described in the case record as "apathetic," the project caseworker discovered that she really had not understood the juvenile court proceedings through which Chris had been placed in foster care, due to her poor grasp of the English language. She had accepted the decision, believing that planning by the "State" was not to be questioned or thwarted.

Chris was apparently happy, living in a stable foster home in which he received loving care and was treated as a member of the family. However, as the caseworker began to know Chris better, she learned that he was puzzled by the separation from his mother and nurtured a desire, although rarely expressed, to be a member of his own family. The worker's initial steps to increase Chris' involvement with his mother, stepfather and 3-year-old half brother were met with pointed resistance by the foster parents, who were understandably reluctant to relinquish him.

A psychological examination of Chris indicated that, despite his positive foster care experience, emotional ties to his own mother were strong. After seven years in foster care, Chris was returned to his mother's home. The foster parents accepted the decision and now fulfill the role of "aunt" and "uncle" to him. Even though Chris' behavior had usually been good, the former foster parents were the first to recognize a new, relaxed freedom in him and Chris' school grades improved noticeably.

In Chris' situation, placement in foster care was counterindicated from the beginning, since the perpetrator of the problem that had forced his placement had been removed from the home. A prompt evaluation-treatment effort would have indicated that Chris belonged at home—and seven years of separation and $14,700 in foster care expenditures could have been avoided.

Barriers to Permanent Planning

What obstacles may hinder permanent planning for children in foster care? Many factors operate to maintain the foster care status quo. These may include, for example, overburdened caseworkers; lack of case management procedures or case review mechanisms; lack of commitment on the part of the agency and workers to change the characteristics of foster care practice; the absence of statutory authority or a poor statute upon which to seek termination of parental rights decisions; and lack of skills in preparing cases for court. We found the techniques and casework tactics described here to be effective in overcoming many of these barriers.

The first step to permanent planning might be termed prevention—reducing unnecessary placements by helping parents function at a minimum level of adequacy. Crisis intervention and counseling services, homemakers, day care—all alternatives must be tried to help keep the family intact.

However, if these efforts fail and a child must be placed in foster care, planning for his or her return home should begin immediately with a thorough assessment of the parents' capacity to provide care. Are the problems which necessitated the child's placement chronic or situational, profound or superficial? Are they remediable—and how?

When a child is first removed from home, parents' emotions are running high. They haven't yet settled into apathy and complacency, and the family dysfunction is usually identifiable. This is the time to engage parents in treatment and to draw up a written agreement between the caseworker and parents, stating the goal of the treatment program—the return of the child within a specified period of time—and spelling out the steps both parties are expected to take to accomplish the goal.[1]

Visits between biological parents and child should begin instantly. Only if parents are destructive in their contacts with the child should visits be restricted. Although a loving relationship between foster child and foster parents should certainly be promoted, the persistent presence of the child's biological parents can help to control the overpossessiveness that might develop on the part of foster parents and which might interfere with the child's subsequent return home.

All casework activity should be carefully documented. Interviews with families should be followed up promptly with a letter reiterating the salient points discussed. This reinforces the worker's contact with the parent and provides the agency with a record of the worker's attempts to help reunite the family. An accurate and running chronology of all activities should be included, and the record kept free of hearsay, rambling opinion or value judgments.

Although the treatment program should be reasonably structured, the caseworker cannot be expected to "hold the parent's hand" throughout the process. If parents are not cooperating, they should be advised—not threatened—that continued unacceptable performance will jeopardize their parental rights.

In deciding whether to return a child home or to work toward termination of parental rights, attention must be directed objectively toward the dangers that may exist for the child if he or she were to return home. Would there be danger of physical abuse? If not, the possibility of physical neglect must be considered. Perhaps the child would be left unattended, without adequate nutrition and medical care. Poor housing or a parent's lack of housekeeping skills might pose a distinct threat to his or her physical health or safety. Can these problems be rectified? Would the child be subject to emotional neglect?

Both legal statutes and the casework process direct how cases are structured for resolution so that permanent plans for children can be realized. In general, the situations of parents whose children are in foster care fall into four categories or cases: *condition cases*, in which parents have a professionally diagnosed incapacity that precludes their fulfilling a parental role; *conduct cases*, in which parents do not display a significant, clinically diagnosable condition but either cannot or refuse to respond acceptably as parents; *abandonment cases*, in which parents, through statement or action, evidence a determination never to resume the care of their children; and *desertion*, when a parent is simply absent for a specified period (in Oregon law, one year).

Condition Cases

If parents suffer from a chronic condition such as mental or emotional illness, serious mental retardation, alcoholism, drug addiction, etc., they may never be able to fulfill their parental roles and the child may never be able to return home. Any condition that precludes the child receiving a minimum degree of emotional nurturing should be documented by psychiatric or psychological examination which addresses both diagnosis and prognosis. If in the evaluator's professional opinion the condition is seriously detrimental to the child and is not remediable, a termination case should be brought to court. The evaluator will necessarily be someone who can be established in court as an expert witness.

Parents who present clear-cut, clinically diagnosed conditions that cannot improve should not be coerced into an involved treatment program.

Conduct Cases

Typical conduct cases involve families with some history of psychiatric and/or marital problems, drinking problems, transiency, chronic and severe financial difficulties, minor law violations, serious housing and housekeeping inadequacies, incidences of abuse or neglect of children, etc. The presence of any one of these symptoms would not support a petition to terminate parental rights, but the collective impact of several will reduce the parents' ability to perform at a level of minimum functioning. These families have a right to a comprehensive, community-oriented treatment program in which the agency matches client problems with appropriate treatment resources—and coordinates the process. Through such efforts many families can be rehabilitated and a surprising number of children returned home.

Formal 8" x 10" color portraits of children, like the one reproduced here in black and white, are presented to the court as exhibits in termination of parental rights hearings.

If, however, the caseworker, supervisor and representatives of community agencies involved in the case agree that efforts have failed to motivate or rehabilitate the parent within a specified period of time, a petition to terminate parental rights should be prepared. Consensus decision making is imperative at this point to minimize the chance for bias or error.

Again, accurate documentation of all efforts through the use of case records and correspondence can provide the information needed to establish allegations. A comprehensive and chronologically organized case record is indispensable for workers testifying in court.

When termination of parent-child relationships is indicated, parents should be offered the option of voluntarily releasing their children before a petition is prepared. Proposing the subject of voluntary release is often difficult, even for experienced caseworkers and the worker's inclination usually is to discuss it at "the opportune time"—when the parent himself brings up the subject. However, since this rarely occurs, caseworkers should initiate discussion of voluntary release as a part of the agency's service options. A surprising number of parents are not aware of this possibility. Although parents may initially reject the idea, it often becomes more acceptable once their defensiveness is overcome and they realize that they may again have to face the task of childrearing—or the unpleasant experience of a termination of rights hearing.

Desertion and Abandonment Cases

Termination of parental rights based on abandonment or desertion requires that a reasonable search be made for missing parents. If it is established that parents know where their children are and have chosen to remain absent, perhaps they should have the right to be spared a vigorous search. However, if desertion could possibly be considered involuntary, the search must be exhaustive.

The past known addresses of parents and relatives, registration lists of the motor vehicles departments of any state in which they were known to have lived, records of utility companies and unions—all must be carefully searched. Knowledge of parents' personal characteristics may produce leads as to their whereabouts. If there is a history of mental illness, for example, admissions to mental hospitals in areas where they had lived should be checked. If they have a pattern of criminal activity, police department "rap sheets" for arrests should be investigated and a further search conducted to determine whether convictions had followed those arrests. Many of these time-consuming chores should be turned over to agency employees other than the al-

(Continued on page 41)

Permanent Planning *(Continued from page 25)*

ready overburdened caseworker.

A search for missing parents should be launched as soon as the child comes into care, rather than mounting a crash effort after the statutory time has passed.

Bringing Cases to Court

When any termination of parental rights case is presented in court, the district attorney and judges will be more inclined to act if the social agency has (1) searched for absent parents as soon as possible after the child was placed and documented the absence; (2) secured psychiatric or psychological evaluations in condition cases; and (3) tenaciously pursued a treatment plan in conduct cases and carefully recorded the rehabilitation effort if the parent has failed to respond. In addition, the worker should assemble a list of witnesses, indicating which facts each witness can testify to. The worker should also have a thorough knowledge of the applicable statutes, be familiar with the relevant case law and the principles of due process, and have some expertise in being a good witness.

Some psychiatrists and psychologists will be reluctant to leave the security of their offices to face cross-examination on the witness stand by aggressive defense attorneys who will probably try to badger, discredit and sometimes disparage them. In condition cases, a professional evaluator's testimony is the primary means through which to resolve the litigation. The worker should feel free to appeal to the social conscience of the evaluator, explaining that the child's chance for a permanent plan is dependent upon his willingness to testify. However, in those cases where the parent or his attorney resists a psychological or psychiatric examination, and the parent's behavior is bizarre and has been so demonstrated in the community, lay witnesses can testify to their direct observations of such behavior and a doctor can diagnose, in court, from a hypothetical standpoint.

The effectiveness in accomplishing needed litigation in our project has been enhanced immeasurably by our arrangement with the public defender's office to provide legal counsel for the children. When the state is the moving party against the parent, the child's status in the litigation is somewhat nebulous, despite the fact that the child is in a position to suffer the greatest impact from the court's decision. An attorney retained for a specific client assumes a different posture than one who represents "the interests of the State." Also, in the event of a judicial decision that is adverse to the child's interest, the child's attorney is in a more politically desirable position to appeal than is the district attorney.

We have found that this arrangement also has the benefit of providing children with legal counsel who are more experienced and sensitive to the child's predicament than are most attorneys appointed randomly from the bar list.

Outcome of the Project

As of October 31, 1976, 26 percent of the 509 children in the project had been returned home to their parents and 36 percent had been freed for adoption and placed in adoptive homes—19 percent with their former foster parents and 17 percent with new families. Three percent of the children are living with relatives.

Seven percent of the children will continue in formalized, long-term foster care. For these children who may never return home and who are not adoptable, the drawing up of placement contracts by the agency is encouraged to offer them maximum security and stability of care. In arranging contracts for long-term foster care, the concerns of all parties involved must be considered: the foster children, the biological parents, the foster parents and the agency.

Nine percent of the total number of project cases have not been satisfactorily resolved, but 19 percent are in process[1] and most of these children will be adopted.

During the third year of the project, now ending, we focused on the resolution of cases remaining in litigation, the analysis of research data, the establishment of a statewide staff training effort to implement the demonstration project throughout the state child welfare system, and the production of various written materials, including a compendium of Oregon case law and a resource manual to assist caseworkers in permanent planning.[2]

The project has recently received funding from OCD for a fourth year to continue following the children's placements, to ascertain the continuity and success of the plans made for them.

Dissemination

In response to the growing awareness of the phenomenon of drift in foster care, the Children's Bureau, OCD is planning to disseminate nationally, over a 4-year period, the concepts and procedures relative to definite decision making and action for foster children. In the first year a number of states will be selected to receive incentive monies to replicate all or parts of the Oregon project or to initiate other approaches that will reduce unnecessary long-term foster care. The Regional Research Institute, which will work in cooperation with others who participated in the Oregon project, has recently been awarded a contract from OCD to provide technical assistance to that effort, to disseminate the results of the Oregon project and to further develop other useful materials.

The participants in the Oregon project are convinced that significant numbers of children now in limbo in foster care can enjoy the benefits of legally secure futures. It takes a concentrated effort and reasonable workloads to screen cases and provide appropriate treatment resources, and tenacious resolve to bring appropriate cases for judicial determination. The results, however, are valuable in terms of both improved planning for children and in increased staff knowledge and skills. ■

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[1] For a discussion of the use of contracts with natural parents as a tool for encouraging parental participation in planning and early decision making, see "Foster Care: The Use of Contracts" by Theodore J. Stein, Eileen D. Gambrill and Kermit T. Wiltse, *Public Welfare*, Fall 1974, reprinted in *Foster Care*, a collection of articles available from the Children's Bureau, OCD, P.O. Box 1182, Washington, D.C. 20013.

[2] A summary of the project, entitled *Barriers to Planning for Children in Foster Care: A Summary*, is available from Regional Research Institute, Portland State University, Harder House, P.O. Box 751, Portland, Ore. 97207.

OVERVIEW OF PERMANENT PLANNING: POINTS FOR DISCUSSION

1. In his article "Permanent Planning for Foster Children: The Oregon Project," Vic Pike identifies three possible permanent plans which can be considered for a child in foster care. He goes on to discuss the elements which are necessary for these plans to be realized. This information is summarized in Table I. Check the table and evaluate your own state or local agency and statute to see if the elements for permanent planning are in place.

2. More than 100 children in foster care in Oregon, labeled "unlikely to return home" by caseworkers familiar with their situation, were returned home with intensive casework. As Pike relates:

   > "Despite the screening criteria bias toward identifying cases suitable for termination of parental rights proceedings, project staff members were convinced that the primary goal of permanent planning should be the reuniting of biological families. Thus, an exhaustive effort was made to accomplish this goal before steps were taken to resolve cases through termination of parental rights. These efforts resulted unexpectedly in a surprising number of children being returned home - 26 percent have now been reunited with their biological families."

   What characteristics of the child welfare system could account for this finding?

3. Pike points out that many foster care placements could be prevented by services to families (crisis intervention, counseling services, homemakers, day care, etc.), and that early identification of problems and intensive work with families could make necessary foster care placements short ones. Are these service options regularly available in your community?

4. Pike lists four categories of situations which lead to a termination of parental rights. Table IIa expands on these grounds for termination, as they are spelled out under Oregon law. Investigate the statute in your own state to determine what grounds exist for a termination or severance of parental rights, and fill this information in on Table IIb.

5. Refer to Table III, the Decision Tree. Note that decision-making points are reflected as diamonds. Who makes these decisions in your state or local agency? Are they made by a group, or by a caseworker alone, or by the court? (Module 1.3 is a good resource for this investigation.)

6. Refer again to Table III, noting that the squares refer to service activities or tasks. Identify the kinds of services appropriate in each instance, and investigate who provides these services in your state or local agency. (Modules 1.4, 1.5, and 1.6 are good resources for this question.)

TABLE I

Alternate Permanent Plans

Plan	**Return Home**	**Adoption**	**Formalized Foster Care**
Elements Necessary to Achieve Plan	• treatment programs to help family overcome barriers to child's return • good, goal-oriented casework including use of written service agreements • availability of community resources to help family	• statutory basis for termination of parental rights • agency and court willing to pursue voluntary relinquishment or termination of parental rights • availability of legal services • well documented case record • recruitment of adoptive homes • adoption subsidies	• state statute and agency practice which allow: - long-term, formalized foster care - guardianship - open adoption - emancipation for older children • recruitment of homes for long-term foster care

TABLE IIa

Typology of Grounds for Termination

(according to Oregon state law)

Parental Typology	**Absent**		**Condition**	**Conduct**
Statutory Definition	absence, or incidental contacts only	absence, intent never to return	• mental illness • emotional illness • mental deficiencies • alcohol or drug addiction	• neglect • abuse • sexual molestation • refusal to provide for child
Caseworker Tasks	• search • publish summons	• search • publish summons	obtain expert evaluation of: • prognosis • diagnosis • evidence of incapacity	structure treatment program around: • written agreements • provision of services • documentation • review hearings
Time	1 year of absence	6 months of absence	- - -	1 year of treatment
Statutory Grounds for Termination of Parental Rights	DESERTION	ABANDONMENT	CONDITION	CONDUCT

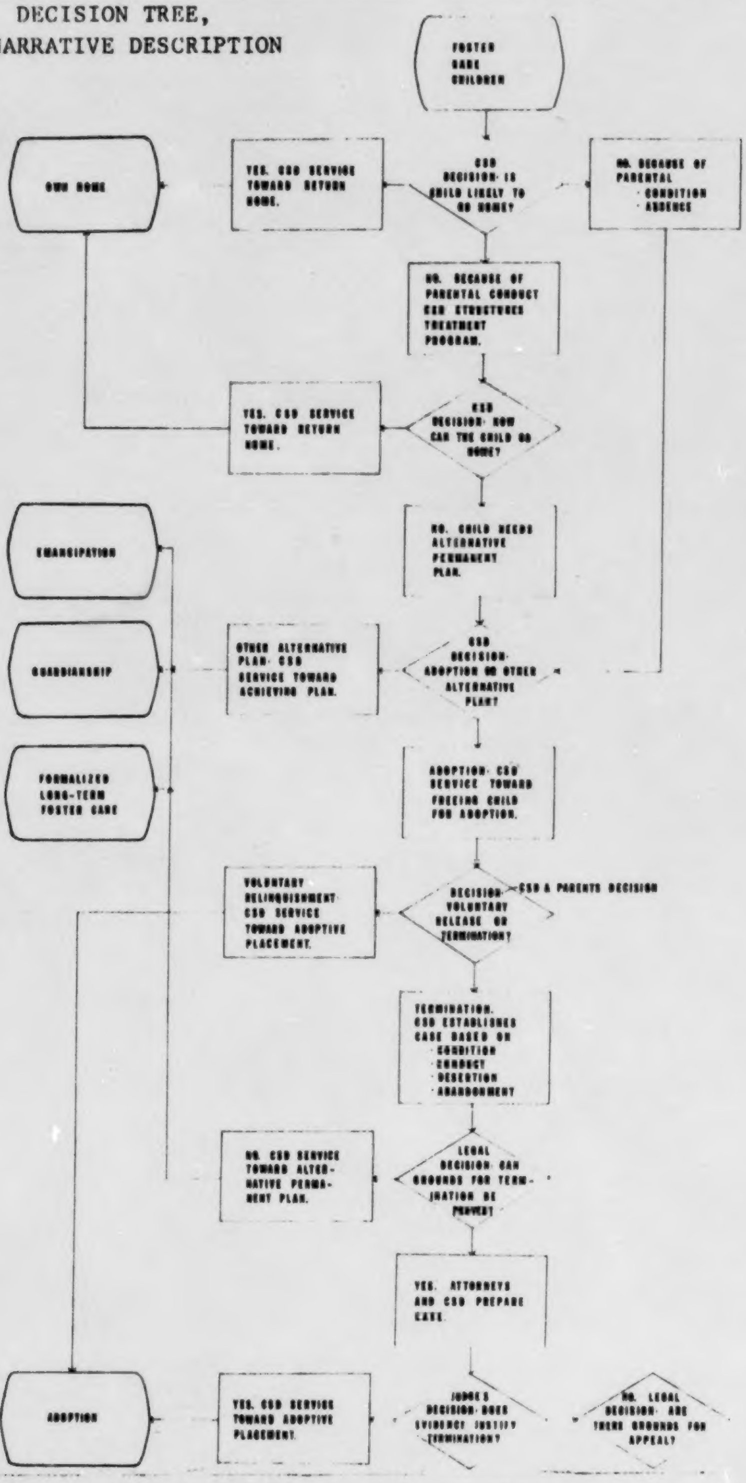
*This example is drawn from Oregon law. Grounds for termination will differ among states.

TABLE IIb

Typology of Grounds for Termination

Parental Typology	Absent	Condition	Conduct
Statutory Definition			
Caseworker Tasks			
Time			
Statutory Grounds for Termination of Parental Rights			

TABLE III: DECISION TREE, WITH NARRATIVE DESCRIPTION


FOSTER CARE CHILDREN
CSD DECISION: IS CHILD LIKELY TO GO HOME?
YES. CSD SERVICE TOWARD RETURN HOME.
OWN HOME
NO. BECAUSE OF PARENTAL · CONDITION · ABSENCE
NO. BECAUSE OF PARENTAL CONDUCT CSD STRUCTURES TREATMENT PROGRAM.
CSD DECISION: HOW CAN THE CHILD GO HOME?
YES. CSD SERVICE TOWARD RETURN HOME.
NO. CHILD NEEDS ALTERNATIVE PERMANENT PLAN.
EMANCIPATION
GUARDIANSHIP
FORMALIZED LONG-TERM FOSTER CARE
OTHER ALTERNATIVE PLAN: CSD SERVICE TOWARD ACHIEVING PLAN.
CSD DECISION: ADOPTION OR OTHER ALTERNATIVE PLAN?
ADOPTION: CSD SERVICE TOWARD FREEING CHILD FOR ADOPTION.
VOLUNTARY RELINQUISHMENT: CSD SERVICE TOWARD ADOPTIVE PLACEMENT.
DECISION: VOLUNTARY RELEASE OR TERMINATION?
CSD & PARENTS DECISION
TERMINATION. CSD ESTABLISHES CASE BASED ON · CONDITION · CONDUCT · DESERTION · ABANDONMENT
NO. CSD SERVICE TOWARD ALTERNATIVE PERMANENT PLAN.
LEGAL DECISION: CAN GROUNDS FOR TERMINATION BE PROVED?
YES. ATTORNEYS AND CSD PREPARE CASE.
ADOPTION
YES. CSD SERVICE TOWARD ADOPTIVE PLACEMENT.
JUDGE'S DECISION: DOES EVIDENCE JUSTIFY TERMINATION?
NO. LEGAL DECISION: ARE THERE GROUNDS FOR APPEAL?

The Decision Tree - Narrative Description

The Decision Tree was developed by the Oregon Project to show graphically what happened to children once they entered the project. Because of the nature of the Oregon Project, children who entered it were already in foster care, and by and large they left the project only when placed in a permanent home. For these reasons, the Decision Tree describes only casework aimed at moving foster children into permanent living situations, and does not describe generally the foster care system of a child welfare agency.

Each of the three shapes used on the Decision Tree refers to a different aspect of the permanent planning process.

Ovals	⬭	indicate a type of placement
Diamonds	◇	indicate decision points
Rectangles	□	indicate service activities or other tasks done, usually, by the caseworker.

The ovals (⬭) indicate the kind of placement the child is in, either in the general foster care pool (at the top of the chart) or in one of the permanent situations listed down the left hand side of the tree: own home, emancipation, guardianship, formalized long-term foster care, and adoption. Other states may have a somewhat different set of exit options from the foster care pool. By following the directional lines from the "foster care children" oval to the desired permanent plan, the student can see what decisions and what services are necessary to achieve it. For instance, a permanent guardianship arrangement can be made appropriately only after the child's parents have been involved in a structured treatment program designed to help them make a home for the child, and after the decision has been made that the parents have not succeeded in doing so and probably can not succeed in the reasonably foreseeable future.

The diamonds ◇ show decisions that must be made in order for a permanent plan to be achieved. At each decision point, the worker, and those helping him, chooses between working on an exit plan for the child (lines from left hand corners of diamonds to ovals) or keeping the child in the system for further service.

The decisions are listed in the order in which they normally would be made. For instance, a decision on whether or not the child can go home (first and second diamonds) would normally precede a decision on whether the child should be released for adoption or placed in formalized long-term foster care (third diamond).

The rectangles (□) show work that needs to be done before the next decision point can be reached, or before the agreed upon plan can be implemented. Generally, these services are the traditional ones offered by child welfare agencies and are in the repertoire of most foster care workers; when done in the context of permanency planning, however, they are done with a specific goal in mind other than maintaining the foster care placement, and are done after a formal decision has been made that the goal is appropriate and the specific services offered will actually help achieve the goal.

The Decision Tree is intended only as a guide for permanency planning casework, and should not be considered a prescription of what must be done regardless of circumstances in a particular case. The value of a chart such as this is that it can show what steps are necessary to achieve each plan, and at what point in case management each decision can appropriately be made. It can help give direction to casework services by placing those services in the context of specific goals and decisions, and in this way lessens the indecision and aimlessness that characterize foster care drift.

TEACHING RESOURCES:

In this module:

- Reprint: "Decision Making Needs in Foster Care," by Kermit Wiltse
- Chart: Types of Foster Care Case Review
- Exercise: Investigations into Caseload Screening and Review Practices
- Paper: Dilemma or Decision: Criteria Used in Permanent Planning Cases
- Group Decision-Making Exercise
- Laura's Case

Other Resources:

- Pike, et. al. Permanent Planning in Foster Care: A Handbook for Social Workers, Regional Research Institute for Human Services, Portland State University, Portland, Oregon, 1977.
- Emlen, "The Value of Caseload Screening and Periodic Case Review," Regional Research Institute for Human Services, Portland State University, Portland, Oregon, 1977.
- Single speaker or a panel of caseworkers or supervisors who have experience in foster care and can describe the experience of making decisions on these cases.

GENERAL LEARNING OBJECTIVES:

The materials in this module are designed to help the learner to:

- Recognize that early and child-focused decision-making is an essential element in permanent planning.
- Understand and apply the concept of minimum sufficient level to families of children in foster care.
- Compare and contrast minimum sufficient level with other criteria which can be useful in decision-making in foster care.

- Understand the utility of group decision-making and the role a worker or supervisor might play in this process.

TEACHING STRATEGIES:

This module deals with decision-making in permanent planning - how it is done, why it is important, and why it is difficult. Kermit Wiltse's article provides an excellent introduction, contexting foster care within the child welfare system, and presenting the case for earlier and more child-focused decision-making.

Whether decisions are made promptly and with great care in an agency can be very much related to whether or not cases are screened or reviewed regularly. The chart on page 1.2.9 outlines four levels on which caseload review and screening in foster care can occur. The exercise which follows outlines an investigation into the kind of review conducted by a state or local agency. This investigation would make a good project for graduate students, or a committee of workers or supervisors interested in implementing practices supportive of permanent planning.

The last items in the module deal with the actual business of making decisions. The paper "Dilemma or Decision" outlines criteria applied to decisions in permanent planning cases. The exercise which follows outlines a procedure for groups of learners to simulate the process of multilateral decision-making. As stated in the introduction to this exercise, the process could be used with any of the sample cases found in these materials, or with a case with which one of the learners is familiar. Laura's Case, the last item in the module, provides an especially difficult decision, but one fairly typical of permanent planning cases. Specific suggestions for follow-up accompany Laura's Case; these may be useful if you choose not to simulate a group decision-making process.

DECISION MAKING IN FOSTER CARE

by Kermit Wiltse

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Decision Making Needs in Foster Care

by Kermit T. Wiltse

An estimated 450,000 children in the United States receive care annually in foster families, group homes and the various types of residential children's institutions which together make up the system we term foster care. Nearly four-fifths of these children are in foster family homes and it is their situation that this article will discuss.

Children enter foster care in one of two general ways: through application by a parent or guardian to a child placement agency (voluntary placement) or subsequent to removal from their parents' custody by court order because they were declared neglected or abused (involuntary placement). The decisions that result in children entering, remaining in, or exiting from this kind of care—and the network of public and voluntary child welfare agencies that make these decisions—are the focus of this article.

A system, of course, does not make decisions; they are made by the people who staff the social agencies that place the children. We will be speaking about "how the system works," that is, about the various agencies generally grouped under "child welfare services," which are responsible for the decision-making processes that result in children being in foster care.

Many people are concerned that the foster care system in this country is not working as expected. Despite the nation's commitment to supporting family life and to preventing family breakdown, the fact is that families are dismembered by the removal and placement of their children in foster care and rarely or too infrequently are restored to at least as good a condition of wholeness as existed prior to the breakup.

A comprehensive study of foster care published in 1959 found that more than 50 percent of the children in foster care in the communities studied were destined to grow up in out-of-home placement.[1] In successive studies since then, the statistics are reiterated, showing that foster care is not a temporary condition for most children. Rather, once "settled in" to foster care, most of these children spend years, in most instances their remaining years to maturity, away from their natural home environment. The most arresting finding of some of these studies, however, is that children tend to be in long-term care as a result of drifting into it, and not as a result of purposeful planning.[2]

Why does this occur? Why does the system work in such a way as to be more a system for retention of children in foster care than one that either restores them to their own parents or moves them into permanent relationships? Can anything be done about the problem of children languishing in foster care? What new insights may be gleaned from current research that suggest at least initial approaches to dealing with those issues?

The remainder of this article addresses this series of

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related questions. Our purpose is to suggest why we should begin to think about changing the way foster care systems work in most local communities, and to suggest steps toward reorienting foster care to achieve earlier decisions that are consistent with a goal of providing maximum stability of care for each child.

Case Planning and Service Delivery

A primary aim of all child welfare services is to preserve and strengthen the child's own home.[3] The development and provision of services to enable children to be cared for in their own homes, including financial assistance, day care, protective services, homemaker services and mental health services, have been a central thrust of social policy and legislative concern ever since the first White House Conference in 1909 focused attention on these needs. A strong preference for family autonomy in childrearing and the preservation of the nuclear family as the primary childrearing environment has been characteristic of American culture since earliest colonial times.

In a family-centered society the closet approximation to the normal family environment, a foster family home, is the preferred alternative when a child cannot remain in his own home.[4] Implicit in this concern for preserving the integrity of the parent-child relationship is a belief that each child must experience continuity and stability in his relationship to his own parents or, alternatively, to foster parents in order to achieve healthy physical and emotional growth.

Although the proposition that a child must experience this continuity and stability cannot be proven beyond doubt by existing empirical studies, a substantial consensus exists among child development experts that disruption of the parent-child relationship, and especially repeated disruption, carries significant risks.[5] Certainly all available empirical evidence plus a commonsense approach to child placement would agree that recurrent disruption should be avoided.

A child who must be placed away from his own home is hence a child at risk; the purpose of social services in his behalf is either to restore his own home to an acceptable level of functioning, so that he can be returned to it, or, if this is impossible, to provide him with an alternative stable source of parental relationships.

The overarching goal of the foster care system is to provide for each child who enters it a stable and continuous relationship with nurturant and loving parents. Acceptance of this goal implies that no child should be allowed to drift in out-of-home placement without a decision being made—either that he will be returned to his own parent or be freed from parental custody and placed for adoption within a definite time limit. In instances in which neither of these alternatives is possible, a plan for permanent foster care should be developed and formalized by written agreement, or legal guardianship should be arranged with the foster parents who will be providing the continuing care.

If the goal of achieving permanency or stability of relationship for every child in foster care were firmly established by each public and private child placement agency, case planning and decision making on each case would counter the present unplanned drift of children in out-of-home care. As we examine each of the three plans among which agencies should choose—restoration of the child to his or her parents, freeing the child for adoption or permanent foster care—our focus is on the necessity for aggressive case planning and decision making toward one of these alternatives for each child.

Restoration to Natural Parents

The decision that brings a child into foster care breaks whatever continuity he has experienced with his own parents, no matter how tenuous that relationship may have been. Many studies have documented the cruciality of this decision, demonstrating that once the child crosses over into care away from his own home his chances of returning to his family are greatly reduced.[6]

At the time of a child's entry into foster care, a plan should be made which specifies what services will be provided by the agency toward the goal of conclusion of out-of-home care for him or her. If custody of the child has been taken from the parents due to neglect or abuse, social investigation for the court and the subsequent hearing ought to have established clearly the conditions in his home that would have to change in order for the child to be returned to it. Vague and indeterminate standards for state intervention into parent-child relationships sometimes lead to unnecessary removals, or to removal for unspecified and unspecifiable reasons, thereby setting the stage for vague plans for services to remedy the conditions that necessitated removal.[7] If the child enters care by voluntary application, a goal commitment to permanency should impel the agency to make firm and specific plans which will bring about the conclusion of out-of-home care. Without such commitment, and in the absence of a service plan which details tasks to be completed by the agency and the biological parents within a set time frame, the infamous condition of a child in limbo is certain to persist.

The precise harm that a child is experiencing by remaining with his parents, according to the court report, or the exact reasons explaining why the child must be placed in voluntary applications, furnish the substance of a contract that should be drawn between the natural parents and the agency social worker. The parents' motivation and commitment to having their child returned to them will be tested as the social worker involves them in making the necessary changes.

The precision and specificity needed in designing and executing social services plans to accomplish the return of a child from foster care are described in an article by Stein.[8] The article reflects a distinct new emphasis in foster care: a call for careful planning and case management in order to reduce the problem which necessitated the child's placement to a level that makes it safe to return him or her home. This standard is a minimum level of social functioning on the part of the child's parents, rather than an ideal home—the kind we seek in foster care homes. Although the parents' home may often compare unfavorably with the foster home in which the child has been placed, the child should be immediately restored to his or her parents if they have been able to overcome the specific conditions that formed the basis for initial removal.

Most of the children who will leave foster care will do so within the first year after placement. This statement is documented by the research of Maas in 1959[9] and by several subsequent reports.[10] Agency commitment to the goal of restoration can only be fulfilled by social workers who first acquire technical skill in working with parents toward restoration, and then receive agency support in terms of the time and travel funds needed for this specialized task.

There are many reasons why social workers in foster care are likely to show far less attention to the natural parents than they do to the foster parents and the child himself. Often the natural parent has neglected or abused the child and hence will suffer by comparison with foster parents who devote themselves to child care. Paramount, however, as an explanation for the typical neglect of the natural parent in the foster care triad is a lack of firm agency commitment to the goal of restoration. Pressing natural parents to achieve the changes required in order for their children to be returned or, alternatively, to press for termination of parental custody demands that social workers be willing to take risks and to make decisions in an atmosphere of strong supervisory support. Without firm agency commitment to decision making, social workers and the children under their care drift together in a sea of indecision.

In sum, those children currently in foster care for whom restoration to their parents is a realistic possibility should be quickly and carefully identified, and this identification should be followed by aggressive efforts to involve their natural parents in decision making and improvements that lead to children's return to their own homes. However, natural parents must not only be helped but also firmly held to making the requisite improvements in their performance as parents, in order to merit their children's return.

Profound questions of political and moral philosophy surround the parents' rights-child's rights dilemma and the issues of the proper relationship of children to their family and the family to the state. The pendulum now seems to be swinging more in the direction of the rights of children and, in the context of foster care, this change emerges as an increased concern that children have the opportunity for stable parental relationships—in short, to be rescued from limbo.

Freeing Children for Adoption

Except for instances in which the child has been abandoned by his parents, most children enter foster care due to some combination of abuse and neglect, including parental inability to provide care due to the parent's or the child's physical or behavioral problems. When a plan is made with the natural parent and it is formalized into a written contract as suggested above, failure of the parent to fulfill his or her side of the bargain—within the agreed upon time limits and assuming that the agency has met its commitments—should regularly lead to a recommendation to the court for termination of parental rights.

The concept of a time limit which would circumscribe foster care agency and natural parent decision making is receiving careful attention. Robert Mnookin developed this concept in a recent article,[11] and his thinking was instrumental in developing legislation, now being considered by the California legislature, in which time limits are prescribed.[12]

Establishing by statute a fixed time period within which the court and the child placement agency must reach a decision either to return the child to his parents or to terminate parental rights is a drastic step. As Mnookin wrote: "The great advantage of a fixed time period rather than an open-ended one is that it eventually requires courts and social welfare agencies to make permanent plans. Any fixed time period is necessarily arbitrary, and inevitably some parents' rights will be finally terminated even though with more time they might have been able to pull themselves and their families together."

These words express a spirit and determination to come to grips with the many complex philosophical and procedural reasons why children languish in out-of-home placement without decision. If the restoration/termination decision were rigorously pressed on all the thousands of cases of children in foster care, adoption would become a potential "solution" to the problem of the limbo of foster care for many of them. The data on the characteristics of all children currently in out-of-home care are insufficient to predict for how many adoption would be a realistic possibility. However, without widespread use of adoption subsidies, termination of parental rights for many children in foster care would contribute nothing towards the goal of continuity and stability of relationships to which we and they aspire.

In his article on the Oregon project to free children for permanent placement (see page 22), Victor Pike describes the obstacles that inhibit movement of children out of foster care. The process he describes by which these obstacles were first identified and then systematically attacked through staff training, staff commitment and imaginative new approaches to decision making is a model for any placement agency determined to examine why children under its jurisdiction may be languishing in foster care.

Long-Term Foster Care

There are at least three somewhat distinct groups of children who become the long-term care caseload of the typical public foster care agency. We do not have definitive information on any of these groups, but in broad outline each presents the agency with a different case management problem.

One group is formed by those who come into foster care as teenagers. These children have come out of severely disordered or conflictual relationships with their parents, conflicts so severe that they could no longer remain at home. A second, less distinct group includes severely mentally or physically handicapped children who have tended to accumulate in the agency's caseload. Even when there is an active decision-making stance on the agency's part, and an aggressive adoption home-finding program, these children will tend to accumulate in foster care agency caseloads because they are less adoptable. The third, and even less distinct, group of children are those who have drifted into a situation of long-term care but are at a point of no return.

In broad outline, each of these three groups requires different types of service from the welfare agency. The teenage group, which seems to be increasing in size and proportion of caseloads in foster care agencies, requires individual and family counseling and interrelationships with such specialized facilities as group homes and foster family homes that deal effectively with teenagers. The severely handicapped children also require specialized facilities and homes but the emphasis of service for them is on care and maintenance, not behavior change.

The third group is more difficult to categorize. Because we are visualizing a group of children comprising a major segment of current foster care agency caseloads, who have arrived at the condition of long-term foster care in default of forthright decision making earlier in their foster care careers, we find it difficult to accept that fact and turn our attention to seeking available alternatives. The harsh reality is that there are many children currently in foster care, and surely more who will continue to enter and get past the intake and restoration/termination decision-making points, for whom we must accept a long-term care alternative.

Guardianship and agency agreements with foster parents are alternatives to adoption in the context of their utilization to add increments of stability and security to an inherently unstable relationship, that between a child and his foster parents. We might think of a hierarchy—adoption, guardianship and agreements—of three types of remedies to the limbo of foster care, each providing in descending order differing amounts of security and stability to children. The social worker's task is to negotiate the highest level he can obtain for each child under his care.

A recent report of a project in Illinois documents how adoption subsidies can be an effective tool for the caseworker in negotiating the highest level, adoption, for children who have settled into long-term care.[13] A careful reading of the report of that project's accomplishments leaves one truly wondering how many in the group we are now considering—that is, the younger, potentially adoptable children lingering in long-term foster care—could be moved toward adoption if all were accorded the effort and resources marshaled for the children in the Illinois project. The project report describes the aggressive home-finding work that was necessary, the intensive work with natural parents, relatives, foster parents, the court and community agencies, but most of all with the children, to accomplish the movement of almost 70 percent of these children into adoptive homes within the time limits of the project. This demonstration project is a model of what can be done, given the availability of subsidies, when we are serious about moving children from foster care to the permanence of adoptive homes.

Legal guardianship and, alternatively, formalized and signed agreements between the foster care agency and foster parents are utilized by some foster care agencies.[14] These are devices used selectively and in the context of casework planning, the objectives being to add increments of stability and continuity to the relationship between foster children and foster parents.

Very little data is available on the extent of the use of these devices, but it is evident that their use is not consistent among local child welfare agencies and that actual frequency of use of either device may be quite low. We need research and experimental projects addressed to such questions as the following: What does guardianship contribute to the foster parent-foster child relationship? What are the hazards involved in its use? What experiences can be assembled from foster care agencies across the country in the use of guardianship and formalized agreements to guide agencies, not now using one or both, if they wish to incorporate their use into agency procedures? We need much better information than we now have before we endorse wholesale use of guardianship or formalized agreements. However, continued experimental use and development of these devices should be encouraged, especially when their use is accompanied by systematic evaluation.

In sum, adoption planning buttressed by subsidies, guardianship and formalized agreements are three devices available to the foster care agency to remove children from the limbo of long-term foster care. It is noteworthy that 75 percent of the children who were adopted as a result of the Illinois project were adopted by those who had been their foster parents. The significance of foster parents as a resource toward the goal of permanency was convincingly demonstrated here. It seems reasonable to assert that foster parents who are good enough to provide care to a child throughout his growing-up years are presumptively acceptable as adoptive applicants. Accordingly, and with reference to the alternative use of guardianship or formalized agreements, foster parents who are in fact providing continuing care are presumptively qualified to be accorded an additional level of responsibility.

Conclusion

Decision making toward the goal of achieving stability and continuity of parental care for each child should be the focus of service of agencies providing foster care. Case planning at the point of entry, followed by careful monitoring of the progress of each case in care toward one of the alternatives outlined in this article, with prompt and aggressive action at the first indication that the case is simply languishing in out-of-

(Continued on page 43)

Decision Making Needs

(Continued from page 5)

home care, are the essential ingredients necessary to counteract drift. Research continues to document the consequences of delayed decision making, and demonstration projects have shown what can be achieved when goal commitment, case planning and effective techniques are focused at each of the decision points in the foster care process. Numerous studies and reports identifying the now infamous limbo of foster care have generated a ferment of national concern. Let us hope that this concern will continue to produce determined efforts at local, state and national levels toward turning the foster care system around. ■

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[1] Maas, H., "Highlights of the Foster Care Project: Introduction," *Child Welfare*, July 1959.

[2] For example, see Jeter, H. R., *Children, Problems and Services in Child Welfare Programs*, Children's Bureau, U.S. Department of Health, Education, and Welfare, 1963 and Fanshel, D., "The Exit of Children from Foster Care: An Interim Research Report," *Child Welfare*, Feb. 1971.

[3] *Standards for Foster Family Service*, Child Welfare League of America, 1975.

[4] Ibid.

[5] See, e.g., Bowlby, V., *Maternal Care and Mental Health*, WHO Monograph No. 2. 1952; Yarrow, L., in *Review of Child Development Research*, Vol. 1. 1964, Russell Sage Publication; Goldstein, Freud and Solnit, *Beyond the Best Interests of the Child*, The Free Press, 1973.

[6] See, for example, Fanshel, D., "The Exit of Children from Foster Care" and Gruber, A., *Foster Home Care in Massachusetts*, Massachusetts Governor's Commission on Adoption and Foster Care, 1974.

[7] For an excellent analysis of the problems of child custody adjudication, see Mnookin, R., "Child Custody Adjudication: Judicial Functions in the Face of Indeterminacy," *Law and Contemporary Problems*, Summer 1975, Duke University.

[8] Stein, T., et al., "Foster Care: The Use of Contracts," *Public Welfare*, Fall 1974.

[9] Maas, *op. cit.*

[10] For example, see Stein, T. and Gambrill, E., "Increasing Continuity of Care for Children in Out-of-Home Placement: A One-Year Report," *Public Welfare*, Spring 1976.

[11] Mnookin, R., "Foster Care—In Whose Best Interest," *Harvard Educational Review*, Nov. 1973.

[12] S.B. 30 was the most recent number of the pending legislation in California.

[13] Hargrave, V., et al., *Where Love and Need Are One*, Illinois Department of Children and Family Services, Chicago, 1975.

[14] Legal guardianship means the judicial appointment of the foster parents as "guardians of the person" of the foster child. In the context of this discussion of long-term foster care, foster parents, with the encouragement of the foster care agency, apply to the court of jurisdiction for guardianship of their foster child for the specific purpose of expressing their desire to have the child be a part of their family. Specific guardianship laws, however, vary from state to state.

CHART: TYPES OF FOSTER CARE CASE REVIEW

TYPES OF FOSTER CARE CASE REVIEW

CASEWORKER-SUPERVISOR

- screening of all cases at intake to identify those appropriate for permanent planning activity
- routine review of all cases

ADMINISTRATIVE

- random sampling of cases reviewed in central office, or
- routine yearly or six-month review

COURT REVIEW

- Court Administered Review - court employees routinely review cases and refer for judicial review those not moving toward permanent placement
- Judicial Review - judges routinely review cases at review hearings, with all parties present and represented by counsel

CITIZEN REVIEW

- board or committee of citizens reviews foster care cases, usually every six months

EXERCISE: INVESTIGATIONS INTO CASELOAD SCREENING AND REVIEW PRACTICES

Conduct an investigation to identify whether caseload screening and review of foster care cases is a normal procedure in your state or local agency. Try to answer the following questions.

The chart on page 1.2.9 identifies four levels at which review of foster care cases can occur. Use these levels as guidelines in determining if review is conducted on any of these levels in your state or locality.

1. Identify any screening or case review instruments currently in use in your agency for children who enter or are currently in foster care.

2. Describe your agency's case review procedures and policies. Who reviews cases? How often are they reviewed? Is this review mandated by state legislation?

3. Does the court play a part in the case review policy? Is this review done by court employees or by the judges themselves? How often? Are reviews done in a formal court setting?

4. Do citizen review boards operate in your state? If so, who serves on the board? Who appoints board members? How often do they review cases?

5. Assess the adequacy of your state or local case review system. Does it allow for frequent review of cases? Does it identify candidates for permanent planning activity?

DILEMMA OR DECISION: CRITERIA USED IN PERMANENT PLANNING CASES

If there is one aspect of permanent planning casework which distinguishes it from more traditional activity in the area of foster care and adoption, it is probably the attention devoted to active decision-making about the best placement for the child, and the compression of decision-making points into a relatively short period of time. The necessity of making decisions may be forced by a crisis or sudden change in circumstances, or may result from a regularly scheduled judicial or agency review. Generally, the most difficult of these decisions address one of these questions:

- Should the child enter care?
- Should the child in care return home?
- Should release for adoption be pursued, either through a relinquishment or termination of parental rights?
- Which is the best adoptive family or other alternative permanent family for the child who cannot return home?

Most frequently, a decision around such questions is not simple or straightforward. Rather, as Kermit Wiltse pointed out in an address to the Third National Permanent Planning Conference, it is likely to be a dilemma -- a choice between alternatives, neither of which is entirely satisfactory.[1] Caseworkers and supervisors who frequently have to face such dilemmas often share this responsibility among themselves by making decisions as a group. They also examine the details of a case against several standards or criteria, each of which constitutes a slightly different way of looking at the situation. The remainder of this paper will examine three of these criteria. These are:

- minimum sufficient level;
- rights of the child vs. rights of the parents; and
- least detrimental alternative.

Minimum Sufficient Level

The "minimum sufficient level" of care necessary for a child's growth and development is a social standard, a minimum of parental behavior. Instances where parenting falls below this standard justify state intervention. The following discussion, taken from Permanent Planning for Children in Foster Care: A Handbook for Social Workers, explains this concept and its application:

> The minimum sufficient level is the point below which a home is inadequate for the care of a particular child. This standard implies that the child needs a certain amount of physical and emotional nurturing. Without it, the child is deprived of the care he needs to reach satisfactory adulthood.
>
> Such a judgment is necessarily relative. There are no fixed criteria; whether or not a home falls below a minimum sufficient level must be decided by informed judgment, which evaluates a particular home as a suitable placement for the child who may return there. To some extent, the minimum sufficient level is set by local, current, community standards. Acceptable standards in one part of the country regarding, for instance, child supervision or corporal punishment, may not be acceptable in another.
>
> A useful way to approach this judgment is to ask yourself, "If the child were returned home tomorrow, would I have concern for the child's welfare?" If so, try to identify the principal cause for concern. Would the child's nutrition, health and physical safety be neglected? Would he be left inadequately supervised for periods of time? Do you have reason to think he might be physically abused? Or could the child be emotionally neglected?

Note that the emphasis is on the care of a particular child. A child with emotional or physical handicaps may have extraordinary needs and require a different level of care than does a child without these handicaps. The age of the child may also enter into a determination of the level of care necessary. Workers with adolescents in their caseloads seek to evaluate the child's level of functioning, as well as that of the parent. A teenager who is largely able to care for himself may be able to return to a home considered marginal for a younger, more dependent child.

It is also important to realize that this standard is intended as a minimum, not an ideal. The courts and the agency do not have the right to require parents to meet some ideal in terms of child raising, but only to require that there be no real danger to the child. Attempts to restore a child to the family should not be confused with efforts to elevate the parental behavior to some level "far beyond that minimally necessary to secure a child's well being."[2] Wiltse points out that this standard may become increasingly useful as we are able to relate it to expanded scientific understanding of specific harms. As we learn more about the child's specific needs -- in terms of nutrition, for example, we will be able to move away from indictments of parental behavior which are loaded with moral judgments.

Rights of the Child vs. Rights of the Parents

The right of parents to raise their own children according to their own norms and customs has long been recognized. That children also have rights is an idea of more recent origin. Initially, these rights were stated in terms of the right to protection from specific harms -- child labor laws and statutes prohibiting child abuse and neglect are examples. More recently, some have begun to claim that the child has rights beyond protection from harm -- specifically the right to a continuity of relationship, to live with a family he can regard as his own. This claim raises questions about where the child's strongest attachments lie, whom he sees as his parents. The child's right to a permanent home, then, must be balanced with the parents' rights and wishes, and this information becomes important data in determining where the child should be placed.

The Least Detrimental Alternative

Finally, and most in keeping with the notion of dilemma, the choices among those possible can be examined to determine which alternative will be the least detrimental to the child. Due consideration should be granted to the biological parents, and to foster parents, relatives, and others who may be involved, but the primary focus of the decision is to provide a good placement for the child. By recognizing that there is not one best plan for the child and everyone else involved, workers and supervisors can approach the decision realistically, and face it as the dilemma it is.

References

1. Kermit T. Wiltse, "Foster Care in the '70's: A Decade of Change," Proceedings of the Third National Permanent Planning Conference. Regional Research Institute for Human Services, November, 1978.

2. Stein, Gambrill and Wiltse, "Foster Care: The Use of Contracts," Public Welfare, Fall, 1974.

GROUP DECISION-MAKING EXERCISE

Simulate a group involved in making a decision about a foster care case. Use a case currently in the caseload of one of the group members, or one of the following sample cases from these materials:

Laura's Case: Should the child be returned to the parents? Adopted by foster parents? Or. . .? (See page 1.2.19)

The Turner/Sears Case, Part II: Should the child be returned to the parents? If not, what kind of casework activity is appropriate? (See page 1.0. 5)

The Turner/Sears Case, Part III: Should the agency seek a voluntary relinquishment or a termination of parental rights to allow adoption? Or continue to work with the mother? (See page 1.0. 7)

Instructions:

- Divide into groups of three to five people.
- You may find that you have differences of opinion about the case naturally. If not, try to take roles, reflecting these different points of view:

  conservative - representing the attitude that the agency efforts should be focused on maintaining the foster care system.

  legal - representing the agency's legal position, options and requirements in terms of state law

  advocate for the child

  advocate for the parents

  advocate for the foster parents

- Try to reach consensus on:
  - -- the plan for the child
  - -- the agency services or support that would go into maintaining the plan
  - -- the appropriate recommendation to the court.

LAURA'S CASE

Laura is from a depressed rural community. Most homes are old and in varying stages of disrepair, family income is very low, with many families receiving public assistance; educational opportunities and community interest in education are limited.

Laura entered care as the result of parental neglect. After a period of apparent disinterest, her parents are now responding to a treatment program including proper food storage, improved basic hygiene, housekeeping standards, and health care, through cooperation with the agency homemaker and public health nurse. They visit Laura regularly in the office or in the foster home, and show their affection for her.

There remain some problem areas. The small family home is in fair repair, but has only a dirt floor; although the climate is mild, it can become very chilly on winter nights or rainy days. The parents own no books, take no newspapers or magazines, and are, in fact, functionally illiterate. They do not see this as a significant problem in their limited world, although in the past they have been unable to follow directions on medication for Laura and have given her incorrect dosage. They are simple people, and are easily influenced by people who are more sophisticated.

Laura, age 4, is in an excellent foster home. Dull, malnourished and suffering from frequent respiratory and skin infections prior to entering foster care, she has blossomed in nine months of care, all with the same family. She is learning the alphabet, has had no infections for the past four months, eats and sleeps well, and loves pretty things (especially dressing in her best clothes and going to Sunday School). The worker and foster parents agree that she is a bright and resilient child based on her rapid improvement in foster care.

The foster parents are anxious that she will lose much of the progress she has made if she returns home at this time. They fear she will never even begin to develop her full intellectual capacity in the marginal school system, and lack of intellectual stimulation, or even awareness of its importance in her parents' home; they fear the occasional prayer meetings her parents attend will be no substitute for the spiritual benefits and socialization provided by her regular attendance at Sunday School; they expect her to miss this severely and fear she will hurt her parents by complaining about this, and resenting the shabby surroundings and second-hand clothes they will provide. Still, the child seems to enjoy visits with her parents and recognizes them as such.

The foster parents feel compassion for the natural parents and their severely limited resources. They feel, if asked, the parents would enter an agreement for planned long-term foster care, or perhaps even an open adoption, and feel this would be much better for the child's future than return to this marginal family.

The worker is at the point of decision. Should the child remain in the foster home with the significant advantages it can offer, or return to the natural parents who have made real progress in the past nine months? The choice is complicated by the real possibility of a planned long-term foster care agreement or open adoption where the child could have all the advantages of the foster home without giving up parental contact.

Suggestions for Follow-up

1. Divide students into two groups and assign each group one of these positions:

   Group A. Make the best arguments you can for returning the child home, and specify your plan for supervision. How would you work with both families and the child?

   Group B. Make the best arguments you can for leaving the child with the foster parents. Would you opt for planned long-term foster care, open adoption, or traditional adoption? How would you work with both families and the child?

2. Discuss the concept of "minimum sufficient level" as it relates to this case. Try to reach some consensus on what is necessary for a child's physical and emotional nurturing. Specifically, address issues of:

   - cleanliness and standards of housekeeping
   - nutrition
   - supervision of children
   - intellectual development
   - emotional nurturing.

TEACHING RESOURCES

In this module:

- Chart: Characteristics of a Permanent Planning Worker
- Group Exercise: Mapping the Role of the Permanent Planning Worker
- The Rogers Case: Chronology of Permanent Planning Casework
- Caseworker Role: Some Useful Concepts from the Literature
- Exercises and Points for Discussion: Applying Theory to Caseworker Experience
- Case Vignettes for Role Playing

GENERAL LEARNING OBJECTIVES:

The materials in this module are designed to help the worker:

- Understand the complex role demanded by permanent planning casework.
- Examine the questions of personal and professional values that are raised by the assumption of this role.

TEACHING STRATEGIES

The materials in this module deal with the role of the permanent planning caseworkers in several different ways. The list of caseworker characteristics is the simplest treatment of this concept, and might be useful as a starting point for discussion. The paper which follows discusses some theoretical descriptions of caseworker roles, with the notion that such concepts are often useful in sorting out the complexity of actual experience. The exercise entitled "Applying Theory to Caseworker Experience" should give students or caseworkers an opportunity to compare theory with experience.

The finding that caseworkers who can successfully assume this role have certain characteristics in common is reflected in the first item, a chart of caseworker characteristics. The chart is designed to serve as a master for an overhead transparency, or as a handout. In either format, the characteristics listed might be useful as a starting point for discussion or for caseworker self-assessment. The source of many of these concepts is research on the Oregon Project which is described in Emlen, et. al., Barriers to Planning for Children in Foster Care published by the Regional Research Institute, Portland State University, in 1976.

The group exercise "Mapping the Role of the Permanent Planning Worker" provides introduction to caseworker functions. The exercise is aimed at building a picture of the worker as coordinator and facilitator in permanent planning casework. Further instructions for setting up this exercise begin on page 1.3. 5. Note that the exercise can be based on the events recorded in "The Rogers Case Chronology," which begins on page 1.3.7, or on the experiences of a worker who has handled a permanent planning case and can recall significant detail.

Material to allow a more theoretical examination of permanent planning casework is presented in the paper "Caseworker's Role: Some Useful Concepts from the Literature." This paper might be used as a reading assignment, or the material it covers could be presented in a lecture. The exercises which follow depend upon an understanding of the theoretical concepts presented in the paper. They are intended for a classroom or training situation where group size is small enough to allow discussion.

The final item in this module is "Case Vignettes for Role Playing." Again, these exercises are most suitable for use with a small group (ideally fewer than 15 people). Instructions for setting up these exercises begin on page 1.3.19.

CHARACTERISTICS OF A PERMANENT PLANNING WORKER

The Oregon Project, and other efforts like it, have identified some attitudes and styles that are typical of a good permanent planning worker.

A successful permanent planning worker:

- Is goal-oriented
- Is willing to make difficult decisions, to take risks, to accept failures
- Has a sense of urgency, with a time frame in keeping with the child's
- Sees herself as a child advocate
- Is direct, honest, and straightforward
- Is confrontive, but not punitive
- Is able to take supervision, to participate in group decision-making
- Is thorough; follows through.

EXERCISE: Mapping the Role of the Permanent Planning Worker

The purpose of this exercise is to develop a map or diagram which shows the role of the caseworker as coordinator and the network of contacts he or she builds in permanent planning casework. Ideally, this activity should be carried out with a small group (fewer than 15 people) so that each member of the group can participate in the creation of the map and in any discussion which follows.

You will need:

A chalkboard, or large sheet of butcher paper

The details of a permanent planning case. (The chronology of the Rogers case, which begins on page 1.3. 7, can be used. Experienced workers may wish to substitute one of their own cases.)

Goal of the Exercise:

To map all of the contacts made by a worker in one permanent planning case.

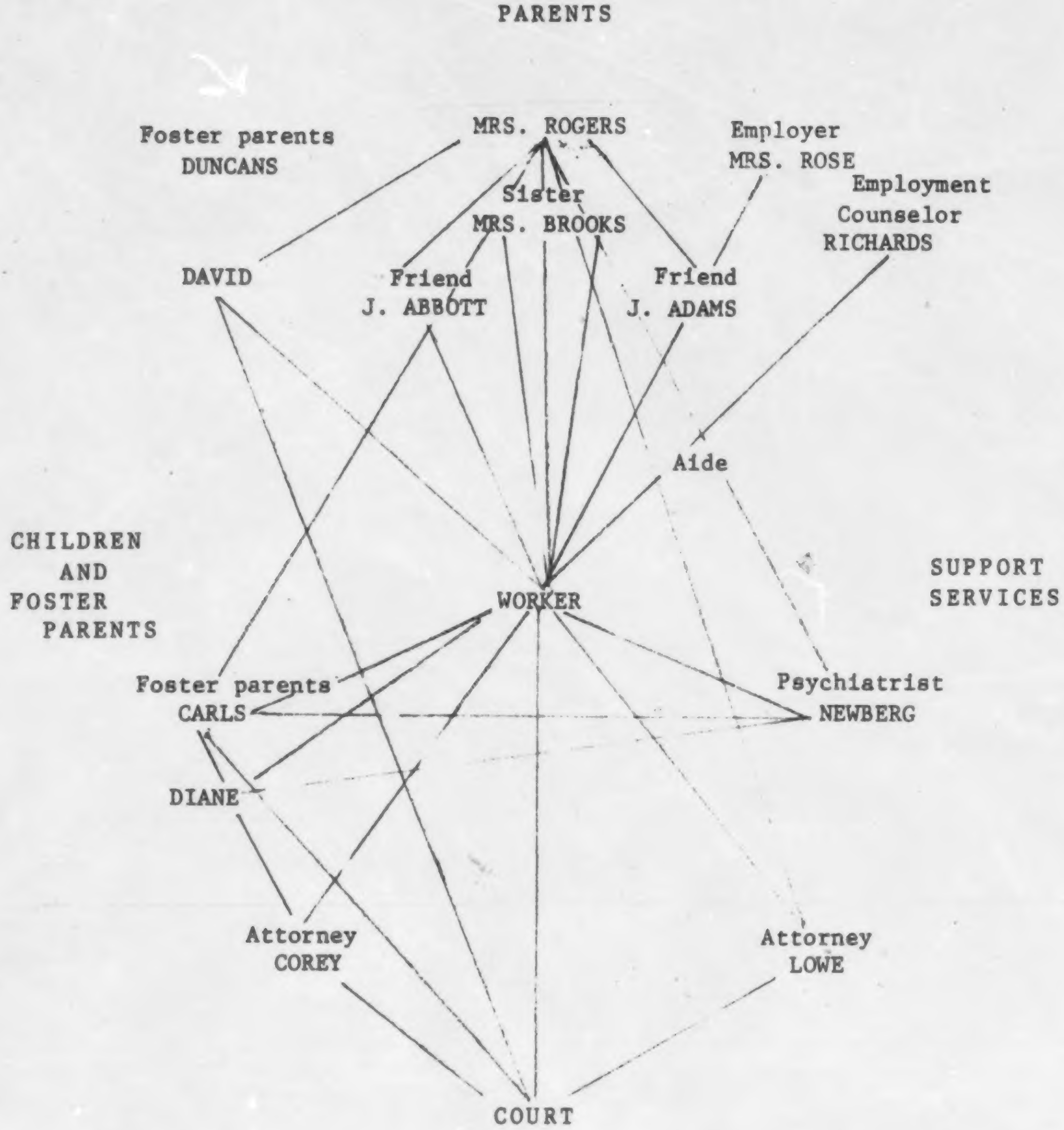
Suggested Procedure:

- Begin with the worker at the center of the chart.
- Divide the chart into quadrants: one for the parents and their friends and relatives; one for children and foster parents; one for the court and its officers; and one for other agencies and support services. (See sample diagram on next page for an example.)
- Draw a connecting line each time a contact is made in the case.
- Don't be concerned with neatness; the idea is to illustrate the complexity of the network the worker develops in permanent planning activities.

Points for Follow-up Discussion:

- Would the contacts in this network hold up without the coordinating efforts of the caseworker?
- Analyze the chart and the case it represents. Where was most of the worker's effort directed? Where could the worker have done more?

SAMPLE MAP OF WORKER'S CONTACTS


PARENTS
MRS. ROGERS
Foster parents
DUNCANS
Employer
MRS. ROSE
Employment
Counselor
RICHARDS
Sister
MRS. BROOKS
DAVID
Friend
J. ABBOTT
Friend
J. ADAMS
Aide
CHILDREN
AND
FOSTER
PARENTS
WORKER
SUPPORT
SERVICES
Foster parents
CARLS
Psychiatrist
NEWBERG
DIANE
Attorney
COREY
Attorney
LOWE
COURT

THE ROGERS CASE: CHRONOLOGY OF PERMANENT PLANNING CASEWORK

The following chronology details the activities of a permanent planning caseworker on one case. A chronology like this might be recorded in a notebook or daily log, where the worker makes brief notes of events and actions on each case. The kinds of casework activities recorded here are typical of many permanent planning efforts - those which result in reuniting the family as well as those which lead to a termination proceeding.

The case involves Marie Rogers and her two children, Diane and David, ages 11 and 2 at the time the permanent planning worker takes over the case. At this point, Diane has been in foster care for six years, and with the same family, the Carls, for more than five of those years. Her mother has visited her only sporadically. David has been in foster care for almost eighteen months. Mrs. Rogers is currently living with her sister, Mrs. Brooks.

The Rogers Case Chronology

1/1/76 I called Mrs. Rogers at her sister's home to set up an appointment with her. She wasn't there. I told her sister, Mrs. Brooks, to tell her I'd be out 1/6/76 at 10:00 a.m.

1/6/76 I drove out to Brooks' home - no one there. I attempted to call again and the phone had been disconnected.

1/7/76 I drove out to Brooks' home - no one there.

1/8/76 I drove out to Brooks' home - no one there.

1/10/76 I found Mrs. Rogers at the Brooks' home and had initial interview. We discussed the fact that the kids had been in care too long and needed to be in a permanent home. I told her my job was to assist her in every way for the children's return - housing, employment, visitation schedule, transportation, counseling, etc. However, if no progress then I'll ask the court to terminate. She said she understood and we agreed upon terms for David's return but not Diane's. She will contact an attorney about a review hearing. Mrs. Rogers to come to office 1/14/76 to sign agreement.

1/14/76	Mrs. Rogers failed to keep her appointment.
1/15/76	I drove out to Brooks' home. Mrs. Rogers said she had forgotten about appointment. We signed David's agreement. I asked Mrs. Rogers to visit Diane in office - she will let me know later.
1/18/76	I made an appointment with James Richards, an employment counselor at the Comprehensive Employment Program, and Mrs. Rogers on the 20th. I drove out to tell her about it and told her to call me if she needed transportation - said she didn't.
1/20/76	I called Mr. Richards and Mrs. Rogers didn't keep her appointment. Gave me appointment for Mrs. Rogers on the 28th.
	I drove out to Brooks' home. Mrs. Rogers said she had forgotten the appointment. I told her she could see Mr. Richards the 28th. She said fine and her sister could drive her.
1/28/76	I called Mr. Richards. Mrs. Rogers failed to keep appointment.
1/29/76	I drove to Brooks' home. Mrs. Rogers was not there.
2/3/76	I drove to Brooks' home. Mrs. Rogers said she had had the flu. I will make another appointment and an aide will drive her.
2/6/76	I talked to Mr. Richards and made appointment for 2/18/76.
2/18/76	Called Mr. Richards. Mrs. Rogers failed to keep appointment.
2/20/76	Mrs. Rogers visits with David in office. We make an appointment to meet 2/22/76 at the Brooks' home to discuss plans.
2/22/76	I drove out to Brooks' home. Mrs. Rogers not there.
2/23/76	I drove out to Brooks' home. Mrs. Rogers not there.
2/24/76	I drove to Brooks' home. Mrs. Rogers was there. She said she had job interview the 22nd and had forgotten our appointment. She still wants job training. She will visit Diane in the office and doesn't want a review hearing.
2/26/76	I called Mr. Richards and made appointment for Mrs. Rogers 3/2/76.
3/2/76	I drove Mrs. Rogers to Mr. Richards' office. They discussed job possibilities and set 3/10 for her to take tests.
3/5/76	I drove Diane to office but mother didn't show. A friend was supposed to drive her.

3/6/76 I drove to Brooks' home. Mrs. Rogers wasn't there but Mrs. Brooks gave me friend's name and address - she was temporarily staying overnight with Judy Abbott. She failed to keep her appointment to visit with David in the office.

3/7/76 I drove to Judy Abbott's place - she will tell Mrs. Rogers to call me. Said she was seeing her tonight.

3/9/76 I drove to Brooks' home. Mrs. Rogers was there and said she had another job interview and forgot. She will call herself for another appointment to visit with David.

3/11/76 I called Mr. Richards. Mrs. Rogers didn't show up.

3/14/76 The aide brought David in for a visit. Mrs. Rogers didn't show up.

3/15/76 I drove out to Brooks' home; no one there.

3/18/76 I drove out to Brooks' home and Mrs. Brooks said come back tomorrow.

3/19/76 I drove out to Mrs. Rogers and no one there.

3/21/76 I drove out to Brooks' home. Mrs. Brooks said Mrs. Rogers was depressed and had gone to Astoria. Said when her sister called she would have her call me.

3/28/76 I drove to Mrs. Brooks' - she said she had told Mrs. Rogers to call me. There is no phone where Mrs. Rogers is staying and she didn't know address. She is to get address on next call so I can write.

4/15/76 Mrs. Brooks called with Mrs. Rogers' address in Astoria.

4/16/76 I wrote to Mrs. Rogers and said I was setting up court hearing and she must call me.

4/20/76 Mrs. Rogers called and I told her the hearing date was 5/19/76. I stated we needed to get together before that date, that she needed an attorney, and we needed a new written agreement.

4/25/76 Mrs. Rogers came to my office - new agreement reached (Mrs. Rogers wanted job instead of job training and Diane was included in agreement for visitation. (I also discussed release and she said absolutely not.)

4/25/76 Drove Mrs. Rogers to Juvenile Court to fill out forms requesting appointment of attorney.

4/28/76	I attended Mrs. Rogers' visit with Diane and David. She was having boyfriend problems and was going to Astoria but would be back for the hearing. We signed the new agreement.
5/19/76	Hearing held. Mrs. Rogers ordered to meet the requirements of the agreement. This was made part of the order.
6/2/76	Mrs. Rogers came to office for her visit with David. I talked to her after visit and asked how things were going. She had not found a job. Was living with a friend, Julie Adams, who was driving her to look for a job.
6/8/76	Aide told me Mrs. Rogers didn't show for visit with Diane - Diane upset.
6/9/76	Mrs. Rogers didn't show for visit with David.
6/13/76	I drove to Julie Adam's place. Mrs. Rogers wasn't there, but Ms. Adams would have Mrs. Rogers call me.
6/16/76	Mrs. Rogers didn't show for visit with David.
6/20/76	I drove to Julie Adam's place - Mrs. Rogers there. I explained importance of her visits. She had a job at Long Brothers Nursing Home and had had to work those days. But now on new shift and will be able to make visits. I told her to call if she couldn't make visits.
6/21/76	I called nursing home - talked to Mrs. Rose, she said Mrs. Rogers came to work June 7 and was still working there, but that she was ready to fire her because she didn't show half the time.
6/22/76	Mrs. Rogers comes for visit with Diane - I talked to Mrs. Rogers after the visit about keeping her job.
6/26/76	Mrs. Carl, Diane's foster mother, called. Diane upset after visit and teacher has called about problems. Diane was angry, belligerent to kids at school, and wet the bed at home. Diane wouldn't say why.
7/5/76	I attended Diane's visit with Mrs. Rogers. Mrs. Rogers talked about Diane coming home and asked questions about Diane's foster mother. When Diane answered, Mrs. Rogers was critical. I attempted to change subject and finally had to stop visit. I left to take Diane home, and told Mrs. Rogers to wait for me. Diane told me she didn't want to visit her mother anymore. When I got back to the office, Mrs. Rogers was gone.

7/6/76	Drove to Julie Adams' and she said Mrs. Rogers was now at her sister's.
7/6/76	Mrs. Rogers missed her visit with David. David's foster mother, Mrs. Duncan, stated David having a difficult time.
7/12/76	I sat in on visit between Diane and her mother - had to stop visit. Mrs. Rogers kept criticizing Diane and finally told her it was her fault she wasn't coming home. I took Diane to her foster home and, again, Mrs. Rogers was gone when I returned.
7/13/76	I visited Diane and her foster mother - Diane doesn't want to visit. When Diane went over to neighbors, Mrs. Carl said Diane had been very difficult to handle since Mrs. Rogers was visiting again. I decided to stop visits until Diane could see a psychologist.
7/15/76	I wrote to Mr. Lowe, the attorney representing Mrs. Rogers, and Mrs. Rogers about visits.
7/21/76	I talked to Mrs. Rogers after her visit with David. She won't see a psychiatrist and doesn't want a hearing about Diane. She said she quit her job at Long Brothers and just began a new one at Lincoln House Nursing Home.
7/22/76	I called Long Brothers and Mrs. Rose told me Mrs. Rogers' last day was June 25. She was fired for absenteeism.
8/4/76	I made an appointment for Diane to see Dr. Ronald Newberg.
8/10/76	Mrs. Rogers missed visit with David.
8/12/76	I drove out to Brooks' home. Mrs. Rogers said she had been working and had tried to call to cancel her visit with David but the line was busy. I again explained importance of visiting regularly.
8/13/76	I called Lincoln Home and Mrs. Rogers was still working there.
9/12/76	I talked to Dr. Newberg after the visit and he wants to see Diane's mother.
8/14/76	I drove to Brooks' home. Mrs. Rogers refuses to see a psychiatrist.
9/15/76	I asked the court to appoint an attorney for Diane.
9/30/76	I had first meeting with Mr. Corey, Diane's attorney. I explained the circumstances and he will file a motion with the court for Mrs. Rogers to be examined by Dr. Newberg.

10/5/76 I called the Lincoln House to see how Mrs. Rogers was doing and she had been fired for absenteeism 9/15/76.

10/8/76 I talked to Mrs. Rogers after her visit with David. I asked if she wanted to change the agreement and she said no.

10/10/76 The Court ordered Mrs. Rogers to see Dr. Newberg.

10/11/76 I talked to Mrs. Rogers at her sister's home, and set an appointment for her to see Dr. Newberg. I also set appointment for Dr. Newberg to see Diane's foster parents.

10/30/76 I called Dr. Newberg after his meetings with Mrs. Rogers and with the Carls. He said he didn't believe Diane could ever go home to her mother and has so stated in his report.

11/2/76 I called Mr. Corey. He will petition for termination.

11/2/76 I drove out to see Mrs. Rogers and told her about the petition and again discussed release with her. She said no, she would never give her up. It was CSD's fault Diane didn't like her - she was spoiled.

CASEWORKER ROLE: SOME USEFUL CONCEPTS FROM THE LITERATURE

A caseworker who adopts the goal of obtaining a permanent home for a foster child may find himself stepping beyond the familiar supportive style of casework. Support is a necessary ingredient in assisting the parents in their efforts to change, but it must be accompanied with a legitimate use of authority as the worker evaluates the parents' progress toward casework goals (Kalb/Boyatzis).

Evaluation may at first seem uncomfortable or incompatible with the caseworker's notion of social work practice. Pincus and Minehan have identified three types of professional relationships that may be helpful in understanding the complex role a permanent planning worker has to assume. These are labeled collaborative, bargaining, and conflictual, and are explained as follows:

> COLLABORATIVE - Such relationships are characterized by mutual trust, confidence, and agreement on goals and means for change.
>
> BARGAINING - As the word implies, this kind of relationship occurs when "each party has something to gain as well as to lose in the effort. . . each party would rather concede something to the other than fail to reach agreement at all." This is typical of the beginning of a professional relationship or of the periods when an understanding is being negotiated, as worker and client seek to test one another to learn purposes, motivations, and expectations. Pincus and Minehan point out that there are four main reasons for entering into a bargaining relationship.
>
> 1) the cultural value placed on working together to attempt to resolve differences
>
> 2) a quid pro quo - one gives up something to get something
>
> 3) differences in status or power between persons may create a bargaining situation
>
> 4) the force of law may require persons of unequal status into a bargaining relationship.
>
> CONFLICT - This kind of relationship occurs when bargaining breaks down, and there are differences in goals or demands. Characteristics of such relationships are resistance, distrust and hostility.

Pincus and Minehan summarize by saying "Critics of the social work profession have accused social workers of avoiding bargaining and conflictual relationships. Indeed some social workers cite social work values that emphasize self-determination and honesty as the justification for avoiding relationships that are not collaborative."

Permanent planning workers cannot avoid bargaining and conflicting relationships, but few see these as inconsistent with the values of honesty or self-determination. It is probably fair to say that the worker who is successful in goal oriented casework is capable of moving from one kind of relationship to another, and to accept each resultant role with the integrity that results from knowledge that the activity is consistent with the goal.

Social work literature can offer some useful concepts for describing the kinds of caseworker activities or roles, as well as the kinds of professional relationships. Three which are often adopted in this kind of casework are those of social broker, enabler, and advocate.

- THE SOCIAL BROKER

  The social broker is a "matchmaker," a "go-between" - he attempts to connect seekers with offerers. Harold McPheeters and Robert Ryan (1971) describe the major function of the broker as linkage. They note, "The primary objective is to steer people toward the existing services that can be of benefit to them. Its focus is on enabling or helping people to use the system and to negotiate its pathways. A further objective is to link elements of the service system with one another. The essential benefit of this objective is the physical hook-up of the person with the source of help and the physical connection of elements of the service system with one another." Some of the aspects of enactment of the role of social broker include:

  1) Broad knowledge of community resources as well as how to find out what resources are or are not available.
  2) Specific knowledge of policies and operating procedures of agencies so that effective connections can be made.
  3) Skill in bargaining and negotiating with persons in other agencies. Not taking the bureaucratic, "No it can't be done" as the answer.
  4) Knowledge of specific "contact" persons in other agencies so that the client can be linked directly.

5) Knowledge of barriers (persons, regulations, etc.) in other agencies so that the client can be prepared.

6) Willingness to follow-up to be sure that an effective linkage has occurred.

(For further elaboration on the role of social broker see Middleman and Goldberg, 1974.)

- THE ENABLER

The enabler is a facilitator and supporter of the client's own efforts at change. Compton and Galway (1975) remark, "The worker enacts the enabler role when his intervention activities are directed toward assisting the client in finding the coping strengths and resources within himself to produce the changes necessary for accomplishing objectives of the service contract." Additionally, the caseworker can support the client in finding ways to alter his environment or his patterns of relating to others. The use of behavioral rehearsal with a client, e.g., role playing a job interview, is an example of enabling the client to behave differently and to cope more effectively.

Indeed, a major objective of all enabling techniques is to reeducate or help the client learn to solve his future life problems using his own abilities and the formal and informal network of services that exists in his community.

The role of the enabler is not necessarily non-directive. Though, on the one hand, the caseworker is facilitating and supporting the actions of the client in his own behalf, he (the caseworker) is also exercising his influence, e.g., his knowledge and expertness, control of material resources and services, legitimate authority, charisma and personal attractiveness, etc., to induce or persuade the client to move toward a goal. (See Pincus and Minehan, 1973, the section on "Exercising Influence" for further elaboration of these ideas.)

Caseworkers new to permanent planning often request a discussion of the hows of inducing or persuading a client -- specific casework techniques. Although techniques are related to the caseworker's individual style and the client's response, in permanent planning they are also related to the use of time limitations for achieving casework goals and the parent's need to understand the seriousness of the casework effort.

At times, casework techniques may need to be very directive, with the caseworker engaging the client in a confrontation about the client's behavior. At other times, the situation may call for active listening, advice-giving, or encouragement. What is important is the caseworker's ability to use both directive and non-directive techniques as the situation requires.

- THE ADVOCATE

The advocate is a partisan spokesman for his client. According to Middleman and Goldberg (1974) "the basis for advocacy in social work is protection of client rights. . . the advocate steps in to help the individual victim or the class of victims obtain their entitlement." In practice, advocacy is an effort, on the part of the caseworker, to make service systems (social agencies, housing authorities, schools) more responsive to the needs of a particular client. Thus, "the advocate will argue, debate, bargain, negotiate, and manipulate the environment on behalf of the client." (Compton and Galaway, 1975).

The permanent planning worker is, in one sense, always an advocate, in that he is constantly working toward ensuring the child his right to a permanent home. In many instances, he becomes an advocate for the parents as well, attempting to ensure them services to which they have a right. If parents have consistently failed to provide even a minimum home for the child and a termination of parental rights is sought, the worker, in his role as advocate for the child, may be pitted against the parents and their legal rights.

These three roles are not necessarily discrete or mutually exclusive. As with the relationships described above, the worker is often moving back and forth between two or three roles, adopting each as necessary to meet the goal of gaining a permanent home for the child.

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EXERCISES AND POINTS FOR DISCUSSION: APPLYING THEORY TO CASEWORKER EXPERIENCE

1. Pincus and Minehan claim that:

   "Critics of the social work profession have accused social workers of avoiding bargaining and conflicting relationships. Indeed, some workers cite social work values that emphasize self-determination and honesty as the justification for avoiding relationships that are not collaborative."

   Discuss this claim, and its implications for casework with families of children in foster care.

2. Read the following descriptions of casework activity, and find instances of client-caseworker relationships which are:

   collaborative
   bargaining
   conflicting

A caseworker remarks,

"The parents kept revising the plan, 'We're together and we want the children.' 'Well, now we're separated and we want the children separately.' Or, 'We want to move in with the grandparents and go into job training and then have the children returned.' Every six weeks or so I was asked to revise the plan. They kept saying, 'It's not that the plan wasn't any good, but I didn't do very well, so I just want more time.' The last four months they hadn't been very successful, but they hadn't been a total failure either. At some point I had to say. 'In the last year there has not been much progress. You are still not at the point where you can have the children returned, and the children have been in foster care a very long time.' I finally got to the point where it didn't seem feasible that they were going to have the children returned to them within the foreseeable future. At that point I began to talk about adoption."

Another caseworker says:

"With one client, moving around was her problem. She had a new place to live about every two weeks. I told her she had to live in one place.

Job training would have been nice, but, since she was always unsuccessful at that, I asked her to merely live in one place for a period of time and do nothing but take care of her child. I helped her get on welfare. I went to the Welfare Office with her and helped iron out all the problems. The only thing that she was asked to do was to go to parenting classes. The mother had a hearing problem and a tooth problem - but we worked that out. Often parents have other problems that they concentrate all their efforts on rather than their children. So I have to help them work these other problems out so that their whole focus is trying to get this child back."

3. Read the following quotes from permanent planning caseworkers and clients and identify which role the worker is playing in each case.

SOCIAL BROKER
ENABLER
ADVOCATE FOR THE PARENTS
ADVOCATE FOR THE CHILD

A client recalls:

"Quite a few times, she even helped me find places where I could get what I needed. I couldn't afford a lot of counseling, so she had me go up to the medical school. I didn't like it up there, though, because I felt like a guinea pig with all the research they do. I just didn't feel comfortable. I told Mrs. Jackson the situation, and she said okay, let's see where else we can take you, so she took me to Catholic Charities downtown, where you pay whatever your income is. . ."

A worker states:

"I have an arrangement where I work with the court counselor. Together we do intensive marital and personal counseling, usually seeing the parents weekly or biweekly."

A supervisor, describing the worker's role:

"Most district attorneys are very busy, and their areas of expertise are usually in criminal law - robberies, assaults, rapes, and so on. They may very well know less about termination proceedings than you do, and so may not show much initial enthusiasm for your termination case. Also, a busy district attorney, with no first-hand knowledge of the child in question, will not necessarily feel the same urgency you do to achieve a permanent plan. Tactful but persistent, frequent reminders and repeated inquiries on case progress are often necessary to get action on a particular case."

CASE VIGNETTES FOR ROLE PLAYING

TO THE INSTRUCTOR:

The following case vignettes are designed to be used as sequential role plays. They are representative of case situations in permanent planning and they have been contrived so that the students can experience the variety of relationships which often arise between client and caseworker in permanent planning casework. You may also want to use them as opportunities to practice roles and techniques.

Situation I establishes the caseworker and client relationship. Their major task in this role play will be to negotiate a new task for the service agreement.

Situation II demonstrates how external events can move the casework relationship into conflict. In this role play, both caseworker and client have new information to share with each other that changes the focus of their relationship.

SUGGESTIONS FOR USE:

Getting Started. . .

- Although role plays are very powerful teaching techniques if done correctly, they typically generate a lot of anxiety on the part of students. If the anxiety level seems very high, give people a chance to be "observers" or turn the role plays into critical incident discussions, i.e. "What would you do next?"
- These role plays focus on caseworker behavior, and people playing that role should understand that there is no one "right" way to proceed. Stress that they are providing material for discussion about alternative ways of dealing with similar situations in the real world. These are opportunities to practice caseworker skills without having to be accountable for the results.
- Time of role play should not run beyond fifteen minutes. If something has not happened in that time, it never will and people will begin to resent having their time wasted. (This may not be true for Situation II; if it appears that caseworker and client are moving toward a resolution of their conflict, they may want to have closure of the experience.)

- Debriefing the role plays should take the form of a guided group discussion. Allow time for participants to "get out of role" and reflect more objectively about what really happened during the role play. Here are some suggestions for discussion:

  Characterize the casework relationships that were played out (Collaboration, Conflict, and Negotiation). (See the preceding paper, "The Role of the Permanent Planning Worker: Some Useful Concepts from the Literature," for a more complete description of these relationships.) Did attitudes towards each other and the task at hand seem to change as the nature of the relationship changed? Did either caseworker or client have feelings of "not wanting to go on with trying to solve the problem?"

  What was the caseworker trying to accomplish, from his point of view? What did the client think the caseworker was trying to accomplish? Is there agreement between the two? If not, where are the differences?

  Did the caseworker do or say anything that seemed to help either situation move more smoothly? What was the nature of these techniques? (Were they directive or non-directive?) Did the caseworker help the client focus on the child's need for a minimal sufficient environment and her need to be independent of her sister, or the part that her presence might be playing in the sister's marital problems?

  Did the caseworker do or say anything that seemed very "unhelpful" to the client? Why might the client interpret techniques as being "unhelpful?"

  What does each person think will happen next?

- You probably have many more debriefing questions that would be relevant. The important aspect of a good role-play experience is that each participant feel positive about his contribution to the exercise. This is especially true for people who play caseworker roles. Always check with participants to make sure there are no more "loose ends" before ending the discussion.

CASEWORKER SITUATION I

This nineteen-year-old was assigned to your caseload about six months ago when her infant son was placed in foster care following an episode of physical abuse by the father. No charges were filed against the father; he has since left the area and the client has started divorce proceedings on her own initiative. The client currently lives with a sister, brother-in-law and their four children in a small, overcrowded house. The client has complained a lot about the crowded conditions and constant bickering between the couple.

The client's sister has been very supportive to her during the past months, but you question how good a role model she can be (given her own problems) and would like to dilute her influence on the client. An alternative living arrangement is one of the issues you intend to pursue with the client today during your weekly interview. All things considered, she has done remarkably well during the past months. She visits her child regularly and there is evidence of a good relationship between them. She will finish a parenting class next month, and has just started a job skills assessment program with the Division of Vocational Rehabilitation.

More than likely, the client's child will be returned to her custody. In reviewing what still needs to be accomplished, you have decided that if the client can find and maintain herself in a small apartment, weekend visits with her son can be arranged. You intend to negotiate apartment-hunting as a new task for the service agreement. You expect no opposition from the client because: 1) she finds her present living situation barely tolerable, and 2) she is eager to have more contact with her son.

- -

CLIENT SITUATION I

You are nineteen-years old with a sixteen-month-old son who is currently living in a foster care home in another area of the city. He was removed from your custody six months ago when your husband abused him physically. Since that time, you have started divorce proceedings and are now living with your sister, her husband, and their four children. Living arrangements are very crowded and are made worse because of the marital problems between your sister and brother-in-law. However, this arrangement solves your need for a cheap place to live, and your sister can really use the small amount of money you give her for board and room. She is your only family member living in this area, and the two of you are very close.

Since the time your son was taken from you, you have been seeing this caseworker once a week. You have an agreement with the caseworker to visit your son twice a week; attend a parenting class; and work with a job training counselor. You understand that this agreement, and any others, are all related to returning your son to your custody. Although life has been very difficult for you these past months, you are very optimistic about having your son back and being able to eventually work part-time. You have just walked into the caseworker's office for your weekly visit.

CASEWORKER SITUATION II

Your plan for this week's interview is to continue the discussion of apartment-hunting. It is even more critical to move on the problem of housing soon because you have had a call from the foster mother indicating that her husband has been offered a new job in an adjacent city. He thinks he ought to accept it.

You would be most reluctant to move the child to a new foster home if a return to his natural mother was possible in the very near future. Remember that the client's current living situation is not an acceptable place for both her and her child.

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CLIENT SITUATION II

Although you were very enthused about the prospects of finding your own place to live, when you got home last week you found a crisis at your sister's house. Her husband has walked out on her, and has taken what little cash they had with him. She is upset and unable to make any decisions about what to do. She definitely does not want you to leave -- she needs both your support and what little money you contribute to household expenses. Today at your weekly interview with the caseworker, you tell her what the situation is now. Moving out when your sister needs you would be unthinkable.

Besides, you're not even sure how to look for an apartment. To your way of thinking, there are no good reasons for why you can't have your son for week-end visits at your sister's house.

TEACHING RESOURCES:

In this module:

- Paper: "Assessment and Treatment Program Design in Casework with Parents of Children in Foster Care."
- Assessment Exercise
- Treatment Program Worksheet

Other Resources:

- Stein and Gambrill, Decision Making in Foster Care: A Training Manual. University Extension Publications, University of California, Berkeley, 1976.
- Pike, et. al., Permanent Planning for Children in Foster Care: A Handbook for Social Workers. Regional Research Institute for Human Services, Portland State University, 1977.
- Psychologist or psychiatrist who provides consulting services to the agency to speak on expert evaluations in assessing parents.

GENERAL LEARNING OBJECTIVES:

Materials in this module are designed to help the learner to:

- Assess the barriers or problems which prevent the child from returning home.
- Identify the elements of a treatment program which will address these barriers.
- Set priorities and sequence tasks at each point in the treatment program.
- Recognize the importance of expert evaluations and other sources of information in assessment and design of the treatment program.

TEACHING STRATEGIES:

This module deals with the initial steps in the process of developing a treatment program which works toward the return of a foster child to his or her natural parent. The article "Assessment and Treatment Program Design in Casework with Natural Parents" outlines these steps, and points out some problems and techniques typical of this stage of permanent planning casework. The material covered in this paper could be integrated into a lesson or lecture, or the paper could be handed out to the students as a reading assignment or resource for future reference.

The Assessment Exercise requires the learner to perform the initial steps in casework planning using the Treatment Program Worksheet. As is noted in the instructions, this exercise can be based on cases the learners are familiar with, or with Part I of the Turner/Sears Case, which begins on page 1.0.1. Students could complete this exercise on an individual basis, in small groups, or a class could address each question in discussion.

Question 5 on this exercise raises questions about the role of expert evaluations in assessment of families and parents. More information about the role of such an evaluator could be gained by using a psychologist or psychiatrist who usually performs this service for an agency as a speaker at a training session. Consider asking such a speaker to address such issues as: how a caseworker can gain the most useful evaluation; what kinds of indications can help in assessing parenting ability; how to deal with issues of privileged information. Chapter 2 of The Handbook for Social Workers also contains good information on assessing barriers and using expert evaluations.

This module does not deal with issues of accuracy, reliability or quality of information used in assessing a case, since the need for information is universal to good casework practice. To some extent, questions of quality of information are covered in module 1.6, in the context of monitoring and getting feedback on progress toward the goals of the treatment program. If you feel that your students need more basic training in gathering and evaluating information for an assessment, or in setting goals for casework, you may find the Stein and Gambrill training manual helpful. Part I of this manual provides material and exercises in these skills, with particular emphasis on a behavioral approach.

ASSESSMENT AND TREATMENT PROGRAM DESIGN IN CASEWORK WITH PARENTS OF CHILDREN IN FOSTER CARE

The skills and concepts a caseworker uses in developing a treatment plan for the return of a foster child to natural parents are not unique. Social workers are constantly involved in gathering and analyzing information and in formulating plans for dealing with identified problems. Some of the problems commonly encountered by permanent planning workers and the responses to these problems are unique, however, and warrant some special attention. This paper will outline the initial steps a worker usually follows in developing a treatment program and points out special considerations which must accompany these steps in permanent planning. These steps are:

- Assessing the barriers or problems which prevent the child from being at home;
- Identifying the elements of a treatment program which will address these barriers;
- Set priorities and sequence tasks at each point in the treatment program.

Two additional steps generally follow those listed above. These are:

- Identifying resources and support, within the agency and in the community, which can help the parent(s) with the identified tasks; and
- Working with the family to translate the appropriate tasks into a mutually acceptable service agreement.

These last two steps are covered in the next module. It is important to have an overview of this process and to realize that the steps within it are not easily separated. They form part of a cycle of assessment and decision-making that will be repeated many times during a treatment program. Reassessment by the worker and the parents recurs as new information becomes available. New resources and tasks become appropriate as a family moves toward the return of the child. Experienced permanent planning workers point out that continuing reassessment and response to the parents' needs and efforts are vital to building rapport and gaining their confidence.

It is also important that the treatment program is developed with the parents and that they understand, and, whenever possible, concur on the tasks and goals it sets out. This element of consensus is most obvious in service agreements where mutual understanding is expressed in writing. When parents are not in agreement with the agency, this position should be documented and the agency's expectations clearly stated in writing. The agency must never engage in railroading parents, but, at the same time, must not allow children to remain indefinitely in foster care because parents make only sporadic efforts at rehabilitation. Involving the parents at every step in the treatment program and aiming at mutual understanding will clarify the agency's position, and help parents decide if they will indeed be able to parent their child.

ASSESSING THE BARRIERS TO RETURNING THE CHILD HOME

Assessment in permanent planning cases is often described in terms of examining barriers. This casework is goal oriented, the goal being a permanent home for the child. Barriers are those things which prevent you reaching this goal. In planning casework with natural parents, you must be especially concerned with those barriers which prevent the parents from adequately caring for the child. It may be that some of these barriers are outside of the family itself (a lack of physical therapy services for a disabled mother, for example, or a very depressed job market which limits a family's earning power). This module deals with those barriers that are within the family, and can be overcome by casework with the natural parents. These can be grouped into three broad areas:

- Barriers related to the child: variables like the child's age, time in foster care, number of placements, physical and emotional handicaps.
- Barriers related to bonds between the child and natural parents, siblings, and foster parents.
- Barriers related to the parents, their situation and problems.

The treatment plan may address the child's problems, especially in the case of severely disruptive behavior or emotional or physical handicaps, where these problems will continue to place extraordinary demands on the family. Bonds between the child and his natural family, and between the child and his foster family, should be addressed with a plan of increasingly frequent visitation during the treatment program. The major barriers to returning a child usually lie with the situation and problems of the parents, and these become the major focus of the treatment program.

You may find it helpful to think in terms of two kinds of barriers relating to parents. First are major problems, frequently the thing that caused the child to be removed from the home in the first place. Some commonly encountered examples are:

- physical abuse or neglect
- emotional abuse or neglect
- excessive use of alcohol or drugs
- mental retardation

A treatment program will also address secondary problems or barriers. These are variables in the parent's situation or circumstances which stand in the way of returning the child home, but in and of themselves are probably not cause for the child being in foster care. Frequently these are physical manifestations of the underlying problem. Some common examples include:

- lack of income
- inadequate or temporary housing
- poor housekeeping
- parent's medical problems

Assessment efforts, and the treatment program to follow, must focus on both kinds of barriers. Experienced permanent planning workers point out that it is often far easier - and more comfortable for the parents - to focus on the more obvious, situational barriers like housing and employment. But the safe return of the child depends on resolution or improvement of the underlying primary problem as well.

One way to identify these underlying problems is to document and describe parental behaviors and attitudes that are detrimental to the child and undermine the rehabilitation of the family. Parents appreciate a fair and non-judgmental approach which invites them to help in identifying problems. Their assessment of how they feel about parenting and about their performance in the past is an invaluable part of assessment.

EXPERT EVALUATIONS IN ASSESSMENT

Thorough assessment often includes evaluation of a parent by a psychiatrist or psychologist. The opinions and findings of such a professional are important for several reasons. A caseworker counts on this judgment to identify any diagnosable and chronic conditions which will prevent the parent from resuming care for the child. In essence, this tells you whether a treatment program is appropriate or even fair; and clearly it is unfair to mislead yourself and a client into spending time trying to resolve an unresolvable situation. Secondly, an expert opinion can help you refine your assessment of parental problems and improve the treatment program.

Since it is not always possible to schedule such appointments quickly, the time that lapses before an evaluation can be obtained should be viewed positively. There is some advantage in getting to know the parents free of preconceptions about their problems and prognosis. The experience you have with those parents, and how they respond to initial phases in developing the treatment program, is important information which can be summarized for a psychologist or psychiatrist who will conduct the evaluation.

TRANSLATING BARRIERS INTO A TREATMENT PROGRAM

The treatment program should address the barriers to the child's return home. Your aim should be to establish a definition of the problem and treatment plan activities that are understood and accepted by the parents. Again, this may be easier when dealing with problems such as housing, and relatively more difficult when dealing with basic problems such as parenting skills, alcoholism, or a life style characterized by transiency or dangerously casual child supervision. To some extent, you may be dealing with a basic difference of opinion in what is considered adequate child rearing. Experienced permanency planning workers point to the concept of minimum sufficient level here, and warn that you must not try to bring parents up to some ideal level of parenting, but rather to a level that is safe and will ensure the child's growth and development. See Module 1.2, Decision-Making, for a discussion of the concept of minimum sufficient level.

Barrier to the child's being at home	Plan to overcome barrier
Mother has left child in care of relatives for extended periods, is now alienated from child.	1. Schedule of increasingly frequent visitation with child. 2. Counseling or therapy to deal with problems which have resulted in mother abandoning child and transiency.
Mother is unable to control or discipline child, is ill-at-ease with her.	3. Parenting classes or homemaker supervision during visits to improve mother's relationship and dealings with child.

SETTING PRIORITIES AND SEQUENCING TASKS

In the process of assessment you will have identified a number of tasks of varying complexity and importance. A logical next step is to set priorities - i.e. to pick basic or critical tasks which must be addressed first because they become the foundation for other tasks. Caseworker and parent should, if possible, work together to identify those tasks which seem most appropriate at each point in the treatment program.

As the caseworker you will be assuming primary responsibility for maintaining an overview of the entire service program, and how it should progress over the proposed period. If a treatment program is to extend no more than one year, for example, you could plan on three or four service agreements, each covering a period of three to four months. Some tasks - such as finding housing suitable for overnight visits and the child's return home - can be handled in a short period of time. Attention to basic problems and actions toward their resolution - counseling and regular visitation, for example - must come right away and continue throughout the treatment program.

Structuring the pattern of visitation during the treatment program is a good example of how the treatment program builds toward a return home. There are many reasons why regular visitation should be viewed as an indispensable element of any treatment program. It is common to start out with weekly visits, and to increase the frequency and length of these visits as parents progress toward treatment program goals. Weekend or week-long visits should precede the child's return home, and an initial return home should be viewed as a trial. Thus the resumption of parenting responsibilities is gradual, and other treatment program tasks occur at appropriate times in support of this incremental responsibility.

SUMMARY

Casework with parents of children in foster care should address the barriers which prevent the child from being at home. Assessment and evaluation of this casework program is an ongoing process, and the entire program must respond to the limitations of time. The caseworker should always ensure that the parents understand, and, to the extent that this is possible, agree with both the definition of the barriers and the treatment program activities designed to overcome them.

ASSESSMENT EXERCISE

Note: Learners who are currently carrying foster care caseloads may wish to use this exercise in reviewing one of their own cases. It may also be used with Part I of the Turner/Sears Case, which begins on page 1.0.1.

1. Assess this case in terms of the barriers which prevent the child from being in a permanent home. List these barriers or problems in the left hand column of the Treatment Program Worksheet.

   OPTIONAL: Does analyzing this case in terms of barriers cause you to view the problems differently from your usual mode of assessment?

2. Examine the problems and situations you have listed as barriers. Are most of them problems within the family? Are they resolvable? Given this information, is it likely that:

   ☐ a. the child will be able to return home soon.

   ☐ b. the child will be able to return home if services are provided to the family.

   ☐ c. the child is not likely to return home, and the agency should work toward an alternative permanent plan.

   If you checked a or b, move on to items 3 and 4.

3. In the right hand column, identify the elements of a treatment program which could overcome each barrier.

4. Choose from among the elements listed in the right hand column those which should be addressed immediately.

5. Should the parent or parents be referred for an expert evaluation? If so, what information could you provide the evaluator? What kinds of information or recommendations would you ask the evaluator to provide?

TREATMENT PROGRAM WORKSHEET

Case:____________________

Date:____________________

Barrier to the child's being at home	Plan to overcome barrier

TEACHING RESOURCES:

In this module:

- Paper: "Service Agreements in Permanent Planning Casework"
- Service Agreement Exercise
- Service Agreement Worksheet
- "Disagreement about the Agreement: What do Do"
- Identifying Community and Agency Support Services: A Worksheet

Other Resources:

- Pike, et. al. Permanent Planning for Children in Foster Care: A Handbook for Social Workers, Regional Research Institute for Human Services, Portland State University, 1977.
- Stein and Gambrill. Decision Making in Foster Care: A Training Manual. University Extension Publications, University of California, Berkeley, 1976.
- Houts and Scott. Individualized Goal Planning with Families in Social Services. Department of Behavioral Science, The Pennsylvania State University College of Medicine, The Milton S. Hershey Medical Center, Hershey, P., 1978. (Send to authors for an order form.)

GENERAL LEARNING OBJECTIVES:

The materials in this module are designed to help the learner:

- Work with the family to translate the appropriate goals and tasks into a mutually acceptable service agreement.
- Specify resources and support services, within the agency and in the community, which can help the parent meet the goals of the treatment program.

TEACHING STRATEGIES:

This module deals with two steps in the process of developing a treatment program to serve the parents of children in foster care: the development of service agreements between parents and caseworker, and the matching of agency and community resources to help parents meet the requirements of these agreements. The steps follow directly from those of assessment and goal identification which were covered in the previous module.

The paper on "Service Agreements in Permanent Planning" outlines the main criteria for this phase of casework and discusses some of the issues related to tying these agreements into overall case management. This material could be integrated into a lecture or lesson presentation, or could be handed out as a reading assignment or reference. The Service Agreement Exercise which follows provides learners with an opportunity to develop a service agreement.

Other good training materials on the development of contracts or service agreements in goal oriented casework have been developed, and some of these have proved useful to workers engaged in permanent planning. The training program outlined in Stein and Gambrill's Decision Making in Foster Care emphasizes restoration contracts, and work with families of children in foster care. The materials developed by Houts and Scott at Penn State cover goal planning with families, and include instruction on the use of contracts. Useful articles for further reference are listed below.

The last two resources in this module are intended as aids for the worker who becomes involved in casework with families. "Disagreement about the Agreement" is a list of strategies which have proven useful to workers and supervisors who are unable to reach consensus with parents about the goals and tasks to be addressed by the treatment program. It would make an excellent aid in a group setting where workers, supervisor, and consultants meet to review difficult cases.

The worksheet on Identifying Community and Agency Support Services is designed for the worker who is trying to build a network of resources to assist parents. If used in a training session, this worksheet should be duplicated so that each worker can keep a copy, and continue compiling a list of people and services which prove useful in daily casework practice. If many of the services listed on this worksheet are not available in a community, this may be a take-off point for another kind of discussion - one centering on techniques used by workers in rural areas.

FURTHER READINGS:

Tom Croxton. The therapeutic contract in social treatment. In Paul Glasser, Rosemary Sarri, and Robert Vinter, editors, Individual Change Through Small Groups, pages 169-185. Free Press, 1975.

Anthony N. Maluccio and Wilma D. Marlow. The case for the contract. Social Work 19(1):28-36, January 1974.

Brett Seabury. The contract: Uses, abuses, and limitations. Social Work 21(1):16-21, January 1976.

Theodore Stein, Eileen Gambrill, and Kermit Wiltse. Contracts and outcome in foster care. Social Work 22(2):148-149, March 1977.

Theodore Stein, Eileen Gambrill, and Kermit Wiltse. Foster care: The use of contract. Public Welfare 32(4):20-25, Fall 1974.

SERVICE AGREEMENTS IN PERMANENT PLANNING CASEWORK

Casework with parents in permanency planning revolves around agreements - usually written - between parents and caseworker about what has to be done before the child can be returned home. Throughout these materials, you will find these written documents called service agreements rather than contracts, although the latter term is also common in social work literature. Contract often has a legal connotation, yet signed contracts between worker and client are not legal documents. The term service agreements, on the other hand, underlines important elements in the practice of this kind of casework - service by the agency in support of the parent's efforts, and agreement between worker and client about the goals of the treatment program and the tasks to be undertaken.

The element of consensus between worker and client is basic to any written service agreement. This paper will examine this and other important criteria for service agreements in permanent planning, and then discuss several variables in how they are used.

CRITERIA FOR SERVICE AGREEMENTS

A good service agreement in permanent planning casework should:

- reflect a real consensus between worker and client;
- be germane to the problem;
- be short term;
- include only a few items;
- clearly state the intent of the agreement;
- be flexible;
- include things the agency is to do, as well as things parents are to do; and
- be written in simple language.

Let's examine each of these criteria:

- Reflect consensus between worker and client: A service agreement expresses an understanding between caseworker and parent. In no sense should it be a list of tasks or requirements which the worker dictates to the parents. If consensus does not exist, there are several approaches to this impasse. These are presented in the checklist "Disagreement about the Agreement" included in this module.

- Germane to the problem: The agreement must address some or all of the barriers which prevent the child from returning home. Its development should follow a thorough assessment, during which client and parent have agreed on the problems which are to be tackled. The tasks should be consistent with the abilities of that client at that point. The provisions should not be set up with the expectation that the client will fail. But you must not sacrifice relevance to make the requirements easy on the client. Resist the temptation to address only the most obvious and easily resolved issues, such as housing and employment. You must include items which get at basic, underlying problems, such as alcohol abuse or emotional neglect. As a caseworker you might ask yourself, "If the parent fulfills this series of agreements, would I want to return the child?" You must give the parents an opportunity to demonstrate the attitudes and behaviors which have been missing in the past, to show that they are ready and able to resume the responsibility of parenting.

- Be short term, and include only a few items: The agreement should be for a period of less than four months. Visitation with the child and meetings with the worker should always be included as items in the agreement, and the number of additional items should be kept manageable. Listing more than four or five items undermines the importance of each individual task. These limitations on time and scope are especially important when dealing with a client who is very troubled or who operates at a minimal level. Basically, the more limited the client, the shorter the time period, and the fewer the items which should be included in the agreement.

- Clearly state the intent of the agreement: The agreement should document the understanding between worker and parents that the purpose of this agreement is to work toward returning the child home, but that its intent is not to promise return if the requirements are met. If the agreements reflect a service plan that addresses the real barriers to the child's return, and the parent carries out the requirements of the agreements, then a return home should follow. But the agency must retain the ability to make a final evaluation of the situation, and to respond to new information or events.

If termination of parental rights is a real possibility in a case, then parents must understand this, and this understanding should also be documented in the service agreement.

- Include things the agency is to do, as well as things the parents are to do: The written agreement should reflect the fact that parents and caseworker share the responsibility for meeting the goals of the treatment program. The agreement should list the services and support which the worker and agency will provide to assist the parents, along with the tasks the parents are to accomplish.

- Flexible: An agreement, once written, should not be viewed as rigid or immutable. The progress on each task should be reviewed routinely, ideally when the worker and client meet weekly. Those provisions should be modified as necessary in order to keep them in tune with the realities of the situation and needs of the parents and child. This kind of flexibility is important in maintaining the trust of the client, and should serve to improve the treatment program, as long as the goal of returning the child home is kept clearly in focus.

- Written in simple language: Finally, the agreement should be phrased in simple, clear language, so that the parents can read it and know exactly what it says. The wording of the agreement should not confuse or intimidate. Avoid legal or social work jargon, and make an attempt to substitute plain, everyday terms wherever possible.

VARIABLES IN THE USE OF AGREEMENTS

How service agreements are developed and tied into the management of a case varies considerably according to the personal style of the worker and the circumstances in the case, the agency, and the court.

The Agreement Itself

The negotiation, wording, and format of these agreements should be consistent with the individual worker's style, and with the circumstances in the case. Two sample agreements developed by workers in Oregon are reproduced on the following page.

Note that both of these agreements are to be signed by the worker and client, and that both state the possibility of a termination of parental rights if the provisions of the agreement are not met. In the Oregon Project, workers dealt almost entirely with backlog cases, where children had been in care for a long period. In a situation where a child has just entered care, and the worker and family are in agreement about the desirability and feasibility of returning the child home, this mention of termination may not be appropriate, and the provisions of the agreement might be quite different. Note also that the second example spells out the intent of the agency to continue to evaluate the mother's ability to parent her children. One copy of the agreement should always go to the parents; another should be placed in the case record.

Involving Legal Representation

In situations where the parents have legal representation, the worker may wish or be required to involve that lawyer in the development of the agreement. Where legal representation exists for the agency, both lawyers may be involved. Workers should welcome this additional voice in support of the parents. In meetings, the attorney for the parents can advocate their point of view, and help to ensure the validity of agreement provisions. During the treatment program, this same attorney can be a positive motivating force for the parents, encouraging them to meet the goals. If the parents should fail, then the attorney understands that it is not because of unfairness or lack of effort from the agency.

Incorporating Service Agreements into Court Orders

The extent to which agreement provisions become part of court orders is a final important variable in this phase of casework. Many permanent planning workers submit the service agreement and an evaluation of progress toward various goals to the court as part of a request for a review hearing, in the expectation that some or all of the items will become part of the court order. Where there is a good cooperative atmosphere between the agency and the judiciary, this process becomes regular procedure. The additional pressure this puts on the client is certainly not appropriate in all cases, but may be reasonable in situations where the client is casual or uncooperative. Integrating service agreements into court orders is one additional tactic to consider in overcoming some of the barriers to returning the child home.

SAMPLE AGREEMENT

90 day Agreement Between Jane Meier and Oregon Children's Services Division

I, Jane Meier, have stated my interest in regaining custody of my child, Elizabeth, and in order to work toward that goal, I agree to the following conditions:

1. I agree to visit my child, Elizabeth Meier, every Wednesday from 1:00 p.m. to 3:00 p.m. in the Children's Services Division office.
2. I agree to meet with my caseworker, Mary Barton, every Wednesday at 3:00 p.m. in the Children's Services Division office to discuss my visits with my child, to review planning concerning my child, and to discuss changes in my situation as well as any other relevant matters.
3. I agree to participate in weekly meetings with a counselor from the County Mental Health Clinic.
4. I agree to keep Mary Barton of the Children's Services Division informed at all times of my whereabouts and home address.

I, Jane Meier, understand that failure to meet the terms of this agreement may result in a petition for termination of parental rights to my child, Elizabeth.

Jane Meier　　　Date

I, Mary Barton, acting on behalf of Oregon Children's Services Division, agree to assist Jane Meier in her efforts to regain custody of her child Elizabeth, and in order to work twoard that goal, agree to the following conditions:

1. I agree to have Elizabeth Meier at the Children's Services Division office every Wednesday at 1:00 p.m. for visits with her mother, Jane Meier.
2. I agree to meet with Jane Meier each Wednesday at 3:00 p.m. in the Children's Services Division office.
3. I agree to arrange transportation, upon request, for Jane Meier so that she can attend weekly meetings with the mental health clinic counselor.
4. I agree to maintain Elizabeth Meier in foster care until a permanent plan can be accomplished for her.
5. I agree to keep Jane Meier informed of any significant matters relating to her child, Elizabeth, such as illnesses, school progress, etc.

Mary Barton　　　Date

It is jointly understood and agreed between Jane Meier and Mary Barton that this agreement will continue in effect for a period of 90 days (unless jointly modified) and will be reviewed by (date), to evaluate progress toward meeting the stated goals.

SAMPLE AGREEMENT

Agreement Between Betty Gault and Children's Services Division

The goal of this agreement is to assist Betty Gault in stabilizing her situation and improving the quality of her relationship to John and Florence Gault and to provide Children's Services Division with the information necessary to make the best possible permanent plan for John and Florence.

Children's Services Division's responsibility is to make a determination and subsequently a recommendation to the Juvenile Court as to whether John and Florence should be returned to their mother's custody. The caseworkers involved will evaluate Betty Gault's progress in several areas: ability to separate completely from James Gault and establish an independent living situation; stability of her living situation; quality of her relationship with her children; ability to meet her children's emotional and physical needs; emotional stability, including ability to control aggressive behavior.

This agreement will cover the period from September 1, 1978, through November 30, 1978. It is anticipated that it will be followed by a second three month agreement. It is further anticipated that the entire evaluation period shall not exceed six months.

A. Children's Services Division's expectations of Betty Gault involve the following:

1. Betty Gault will maintain regular, weekly contact with a caseworker from Children's Services Division. Appointments will exclude other persons, and will be for the purpose of assisting Betty to meet the requirements of this agreement and to evaluate her progress. Betty will inform Martin Sims if she is unable to keep a scheduled appointment.

2. Betty Gault will maintain regular visits with her children. Visits will occur every other week for approximately one hour. The primary purpose of these visits is to improve the quality of the parent-child relationship. Children's Services Division will supervise these visits as needed and assess the effects of the visits on John and Florence. Depending upon the children's reactions to these visits, a modification of the visitation schedule could result.

3. Betty Gault will separate from all contact with James Gault. She will follow through on obtaining a divorce from him.

4. Betty Gault will obtain counseling. Counseling will occur on a weekly basis throughout the duration of this agreement. Betty Gault will release to Children's Services Division information concerning the frequency of her attendance at counseling sessions. In addition, Betty Gault will allow her counselor to release to Children's Services Division information concerning the progress she has made by engaging in counseling. This report will focus on Betty's ability to be an adequate parent to her two children. Specifically, does she have adequate parenting skills, sufficient emotional maturity, an ability to control her temper, a more positive self-image? Children's Services Division will not have access to specific information concerning the content of Betty's therapy sessions, but rather to an evaluation of her total progress.

5. Betty Gault will begin to make steps towards an independent living arrangement. Before or during the month of September, she will obtain employment. Before or during the month of October, she will obtain housing independent of James Gault.

SIGNED:______________________________ DATED:______________

B. The caseworkers' responsibilities involve the following:

1. The caseworkers will keep all scheduled appointments. The caseworkers will inform Betty Gault in advance if they are unable to keep a scheduled appointment.

2. The caseworkers will provide partial supervision of the visits between Betty Gault and her children.

3. The caseworkers will provide whatever assistance is necessary to help Betty Gault meet the provisions as outlined in this agreement.

4. The caseworkers will conduct a thorough investigation concerning Betty Gault's past and present situation. This will be done in an effort to evaluate her capacity as a parent.

5. The caseworkers will continually evaluate Betty Gault's ability to provide a permanent home for John and Florence Gault. The caseworkers will keep Mary informed of their evaluation of her progress at any given time.

SIGNED:______________________________ DATED:__________

SERVICE AGREEMENT EXERCISE

1. Outline the major points to be included in a service agreement, based on Part II of the Turner/Sears Case, or on a case with which you are familiar. Use the Service Agreement Worksheet to record these points. (See sample worksheet on the back of this page.)

   - In the left hand column enter the tasks or responsibilities which you would suggest to the parents. (Note that visits with the child and meetings with caseworker are already entered in this column, since these tasks are basic to all efforts to regain custody of a child.)

   - In the right hand column list the things the agency agrees to do in support of the parents' efforts, and other resources which can be utilized.

   - Fill in, as much as possible, specific information about where and when each task is to be performed, and the time limit for the service agreements.

2. Draft a written agreement which encompasses the points you have outlined and which you think would be acceptable to the parents.

3. Evaluate the agreement you have drafted against these criteria:

   - Is it germane to the problem? Does it address the most important barriers preventing the child's return home?

   - Is it short term? Are the number and magnitude of things required manageable?

   - Does it clearly state the intention of the agreement?

   - Does it include tasks the agency will undertake, as well as things the parents are to do?

   - Is it written in language the parents could understand?

SAMPLE

SERVICE AGREEMENT WORKSHEET

Agreement between Jane Mue and Mary Barton

Date: May 1, 1978

Proposed time limit 3 months

Parent's tasks	Where	When	Agency's tasks	Other resources
Visits with child, Elizabeth	CSD office	1:00 to 3:00, each Monday	provide transportation for Elizabeth	
Meetings with caseworker, Mary Barton	CSD office	3:00 to 4:00 each Monday	to help Jane assess her visits with Elizabeth and review plans for child	
Obtain counseling	Co. Mental Health Clinic	weekly (to be arranged)	transport Jane to Clinic, if necessary	Dr Paul Johnson, counselor
			Maintain Elizabeth in foster home	
			Keep Jane informed of significant matters related to Elizabeth	

SERVICE AGREEMENT WORKSHEET

Agreement between ____________ and ______________

Date: ____

Proposed time limit ______________________________

Parent's tasks	Where	When	Agency's tasks	Other resources
Visits with child				
Meetings with caseworker				

DISAGREEMENT ABOUT THE AGREEMENT: WHAT TO DO

When caseworker and parent are having difficulty working out a mutually satisfying service agreement, the following suggestions should assist with clarifying the problem. They can be viewed as a hierarchy of possible methods of resolution, from the simplest (communication) to the most extreme (court intervention).

1. Communication

   - Are parents actively contributing to the process of deciding about what goes into the agreement; is the caseworker really listening to the parents' input; is the worker trying to impose an agency assessment on the parents?

   - Do the parents understand the caseworker's proposals? Try rewording and clarifying. Ask the parents to repeat in their own words what the worker proposes; the worker should repeat back to the parents his/her understanding of their counterproposal. Differences in culture and vocabulary may create confusion, while actual differences in intention may be minimal.

   - Is the worker operating under constructive assumptions about the parents' ability to understand, to change or modify behavior? Is the worker directly or indirectly communicating negative biases regarding the parents?

2. Areas of Disagreement

   - Are worker and parents in disagreement as to what basic problems are preventing the child from returning home?

   - Do they agree as to what the problems are, but disagree on how to remedy them?

   - What evidence is available to validate each conflicting opinion? Can enough objective evidence be gathered to resolve the differences? Is this evidence being shared fully between the parents and worker?

   - Are the differences related to essential issues or fringe issues? What would be the effect on the child's safe return home if this difference were resolved in favor of the parents?

- Is there a more basic level of agreement that can be reached for an initial service agreement? Is the proposed agreement trying to address too many issues? May information be gained in working through an initial service agreement that will contribute to resolution of the issue for inclusion in a subsequent agreement?

3. Other Means of Resolution

- Use the group process in mediating differences, possibly including the supervisor, parent's attorney, child's attorney, agency attorney, foster parents, homemaker, therapist/evaluator, or others directly involved with the case.

- Consult with the agency attorney about bringing the matter to the court in a review. Discuss with the parents your belief that the court needs to be informed of this problem, and asked for guidance.

- Request a court review to resolve the conflict.

IDENTIFYING COMMUNITY AND AGENCY SUPPORT SERVICES: A WORKSHEET

In structuring a treatment program for a family, you will frequently wish to utilize support from within your own agency, and from the community at large. This worksheet is designed to assist you in identifying some of the services typically used in this kind of casework. Use it to keep notes of names, addresses and phone numbers as you build a network of support for your permanency planning efforts.

Mental Health Services

Alcohol Rehabilitation Program

Drug Treatment Program

Family Counseling

Child Abuse Program

Homemaker Services

Parenting Classes

Day Care

Job Training Resources

Employment Services

Community College

Medical Facilities

Psychological Evaluations

Housing

Nutrition Programs

TEACHING RESOURCES

In this module:

- At Your Desk: Record Keeping in Permanency Planning
- Self-Assessment on Record Keeping
- Evaluating Visitation: An Example of the Quality of Information
- Documentation and Evaluation Exercise
- Sample of Information Recorded on the Turner/Sears Case

Other Resources:

- Utah Division of Family Services, Results Oriented Recording, available from: Utah Department of Social Services, 150 W. North Temple Street, Salt Lake City, Utah 84110. Price: $3.00.
- Pike, et. al. Permanent Planning for Children in Foster Care: A Handbook for Social Workers, Regional Research Institute for Human Services, Portland State University, Portland, Oregon, 1977.

GENERAL LEARNING OBJECTIVES:

The materials in this module are designed to help the learner to:

- Keep track of the activities on permanent planning cases
- Synthesize information into accurate dictation, and effective case summaries and reports to the court
- Collect the kind of information which is necessary to make the best possible decisions regarding placement for the child

TEACHING STRATEGIES:

The materials in this module relate to skills which are basic to on-going casework -- collecting, documenting, and evaluating information about a case. These skills are closely tied to those addressed in other modules. Evaluation of casework activities follows directly from the identification of those activities in a service agreement. Utah's training program, outlined in the publication Results Oriented Recording, is designed to strengthen the connection between case recording, case planning, and the development of written plans with clients. Evaluation of the information collected about a case is an essential part of decision-making, and Documentation and Evaluation Exercises in this module require the student to apply information collected to a decision about the Turner/Sears Case. Finally, documentation of casework activity is the first step in gathering evidence if a permanent planning case moves toward formal court action. The skills involved in assembling evidence will be covered in Module 2.4, "Preparing Evidence for Termination of Parental Rights."

The paper "At Your Desk" deals with record keeping and documentation at two levels: first, the basic keeping track of details and practical tips on how this may be done; and second, the more complex skill of synthesizing and summarizing the mass of data into clear and useful dictation and reports to the court. The one-page "Self-Assessment on Record Keeping" provides a tool for learners to check their own documentation procedures against this list of procedures considered ideal for permanent planning activities. Use of this checklist can be a good starting point for discussion about the whys and hows of documenting, and for examining how these points fit with current agency procedure for case recording. If more learners mark items "inappropriate," the discussion may be focused on the goal of casework, and whether this goal is reflected in documentation efforts.

Additional pointers on documentation can be found in Chapter Two of the Handbook for Social Workers. "Evaluating Visitation: An Example of the Quality of Information" deals with another aspect of documentation: that is, how a caseworker collects the kind of information necessary to make decisions about the best placement for a child. This paper includes recommendations on evaluating visitation, using these as specific examples of a general approach to obtaining feedback on casework activities. The "Documentation and Evaluation Exercise" which follows requires the learner to state how such feedback could be obtained on the Turner/Sears Case. A "Sample of Information Collected in the Turner/Sears Case" is included as the last item in this module, and should be helpful to the instructor using these materials. The exercise goes on to require the learner to make a recommendation for agency activity following Part III of the Turner/Sears Case, and to state this recommendation in a report to the court.

AT YOUR DESK: RECORD KEEPING IN PERMANENCY PLANNING

Caseworkers who don't mind desk work are at an advantage in permanency planning. If successful casework requires persistence and thoroughness in work with clients and collateral persons, it is also abetted by these same qualities in relation to getting and storing information on the case. Although caseworkers record events of significance on all their cases, this activity takes on special importance in permanency planning, as case records may become evidence in court hearings. In any event, you will need good information records to help you plan future actions on cases. Finally permanency planning casework tends to generate a great deal of activity -- visits between parents and children, appointments with community agencies, numerous telephone calls and visits between client and caseworker -- which can become difficult to keep track of. Efficient record keeping can help you monitor activities, and prevent cases from getting lost in the press of more urgent requests on your time from clients in crisis.

Documentation in Permanency Planning

A supervisor remarks. . .

A primary, essential, unavoidable rule is document, document, document. Admittedly, the tedium of the practice is at times overwhelming, and if the parent improves and the children return home, it may not have been necessary. However, proper recording of the worker's activities is directly related to success in court. Depending on legal practices in your state, your case record may be submitted as an evidentiary exhibit. Any issue with possible controversy is secured by case recording and supporting correspondence.

A caseworker remarks. . .

I document every phone call, every conversation, every message I leave, so that even if I never see the parent the fact that I could never get a hold of her is indicative of what she's doing. With one client, her friends said that she saw messages when I left them, but she still did not call me. Because I kept going to her friends' houses and leaving messages and the friends said "Yes, she was here, I gave her the message," but she still didn't call, I could prove that she was not making herself available. I had it documented and that established the case.

Documentation this extensive is clearly related to building a case for possible court action. Obviously, not every permanent planning case will go to court. But the worker who accepts the goal of obtaining a permanent home for a child is responsible for maintaining a record that would support such an action, if efforts to reunite the family fail.

The practice tips on case recording listed below range from simple devices for keeping current on cases, to the more complex activities of synthesizing and evaluating information for inclusion in case dictation or in formal communications such as reports to the court.

- Tickler Files - On its simplest level, a tickler file is simply notes on a desk calendar. In permanency planning, where follow-up is particularly important, the caseworker can, for example, remind himself to check on whether his client kept an appointment, or the day to call and see whether the client appeared. Some agencies have more elaborate systems. A unit clerk may be responsible for reminding caseworkers of court dates, time of in-house case review, or other upcoming events of importance.

- Chronology - A small loose-leaf notebook, "The Black Badge of Courage," with tabs for each case, is considered indispensable equipment by some permanency planning workers. They use it to record all their field activities in log form. The case chronology on the Rogers family in Module 1.3, The Role of the Permanent Planning Worker, p. 1.3.7, is an example of the entries in such a notebook.

- Telephone Contact Forms - If the substance of telephone calls is not kept in the loose leaf notebook, it can be memorialized on telephone contact forms. These lists should be in handy reach from the phone, and, in addition to identifying information, provide space to record what was discussed on the phone, and with whom.

- Letters - Copies should be made of all correspondence for the case file. Important telephone calls should be memorialized by letters reiterating the salient information from the telephone conversation.

- Dictation - The quantity of activity on a permanent planning case makes frequent dictation necessary, probably about once a month but not less than every three months. The material for dictation comes from the copies of letters. the case chronology, and other note-keeping devices. Dictation should relate the activities of the case in chronological order. Future plans for the case should be explained, as well as recommendations of the district attorney or other collateral persons. Opinion and speculation should not be included, or should be relegated to a separate section, as they are likely to be inadmissible if the record is ever used as evidence in court.

- Reports to the Court - Since permanent planning cases almost always involve the juvenile court, it is often necessary for workers to send reports to the court describing past activities of the case and making recommendations for the future. It is often difficult to separate out, from the multitude of details and bits of information, those facts that are most descriptive and persuasive and that will support the caseworker's recommendations. The following outline covers the major areas that are usually included in reports to the court.

1. Name, address, age of all family members.

2. Brief chronology of significant past events, such as:

   - dates child entered foster care, and returned home,

   - dates of past court hearings and the original grounds for custody,

   - other

3. Brief description of the current situation.

4. Summary of services offered by the agency and what the outcome of them has been.

5. Summary of visitation including number of visits and an assessment of their quality.

6. Summary of support, including the amount of support ordered and whether it has been paid.

7. Recommendation for court action, and a brief statement explaining why the action is being requested.

SELF-ASSESSMENT ON RECORD KEEPING

The recordkeeping practices listed below are considered essential by many permanent planning workers. For each item, rate your own current case recording.

	I always do this	I seldom or never do this	Inappropriate
Tickler File			
• Marking client's appointments on calendar			
• Marking reminder to follow-up on client's appointment			
• Procedures for notifying worker of hearings and in-house reviews			
Chronology			
• A running log of all activities and contacts on a case.			
Telephone			
• Record of all phone calls on each case.			
Correspondence			
• Copies in case file			
• Letters to memorialize important in person or telephone contacts			
Dictation			
• Entered every 1-3 months			
• Opinion and speculation excluded, or in separate section.			

EVALUATING VISITATION: AN EXAMPLE OF THE QUALITY OF INFORMATION

Caseworkers who deal with families of children in foster care must be concerned with the quality of the information they gather in the course of casework, as well as with the methods and thoroughness of record keeping. Documentation, like casework itself, should be goal oriented. The goal of casework is to ensure each child the best possible permanent placement; the resultant goal of documentation is to collect information which will allow the worker and the agency to make the best possible placement decisions.

A treatment program with biological parents is, in part, an opportunity for the worker and the agency to gather information about the ability of the parents to adequately care for their child. It is important that this information be relevant to the problems which are now preventing the child's return home. If parents are involved in counseling or therapy, for example, it is not enough to simply keep track of their attendance at appointments. The worker must arrange to obtain some indication of the progress made toward overcoming the difficulties which indicated the need for counseling, and for removal of the child, in the first place.

In general, two guidelines could be set up as parameters for gathering relevant information:

- Know the purpose of each task or activity which is included in the treatment program. Make certain that this is clear to the parents and to others who are involved (example, the child, foster parents, counselors).
- Gather information which relates to the stated purpose.

Let's look at one application of these general guidelines. Visits between parent and child are common to virtually all treatment programs in this kind of casework. Evaluating visitation is a task that commonly falls to the caseworker. But unless the purpose of the visits is clearly understood there may be some confusion about why the worker is present. Most frequently the purpose for such visits is:

- to reestablish relationship between parent and child,
- to establish parent's ability to be constructive and dependable in setting up and maintaining a visiting schedule,
- to provide the agency with an opportunity to observe and document parent's manner of relating to child, and changes in parent's manner of relating to child over time,

- to provide the agency with an opportunity to observe and document child's responses to and interaction with parents, initially and over time,
- to engage foster parents in observing and evaluating child's responses to visiting, and in constructively interpreting visiting to child, and
- as preparation to return home, to engage foster parents in assisting natural parents in developing broader knowledge and understanding of child (face to face where possible, or through the agency worker).

Once the purpose of visitation is understood, it is easier to pinpoint the kinds of questions the caseworker's observations should address:

- Is parent able to consider child's feelings on visiting?
- Is parent willing to try adapting own behavior to needs of child in establishing and carrying out visiting?
- Is parent learning to control impulsiveness?
- Can parents express concerns about relationship between selves and child, or do they deny any cause for concern?
- Is parent interested in learning more about child?
- How does extended family fit into parent/child relationship - supportive, disruptive, indifferent? How does the parent deal with this?
- Can parent request help/advice from appropriate sources?
- Is hostility or defensiveness toward agency diminishing?

It is clearly not intended that visits with the child, or any other kind of activity outlined by the treatment plan, continue if problems arise, just to meet the goal of collecting information. If problems arise with visitation, consider these solutions:

- modify visiting schedule,
- add structure to visits,
- request an evaluation of the child related to visiting problems,
- determine if problems are being exaggerated or aggravated by unhappy foster parents.

Other elements of the treatment program should be monitored and evaluated with the same care as visitation. If parents and others involved understand the purpose of this monitoring, there is much less chance of misunderstanding or of accusations of railroading or building a case against parents unfairly.

Collecting and documenting information clearly relevant to the purpose of the treatment program makes decision-making easier at the agency level, and makes it possible for the agency to back up recommendations to the court with quality information.

DOCUMENTATION AND EVALUATION EXERCISE

1. Look at the casework activity described in the Turner/Sears Case, Part III. During the four months recorded here, there have been opportunities to document and evaluate the prospects for Nancy and Neal Sears as parents to Annie. This information becomes especially important as the case comes up for review. How would you have gathered information during those four months? What would your sources of information have been (i.e., people you spoke with or events you yourself observed), and what questions would you have sought to answer in each instance? List these below:

SOURCE OF INFORMATION	KIND OF INFORMATION SOUGHT

2. On January 7, you are asked to present this case to your supervisor and other workers for case review and planning. What will your recommendation be? What is your argument in support of this recommendation?

3. A court review of this case is scheduled for January 15. Using the outline provided on page 1.6.5, draft a report to the court outlining your recommendation on this case, and the relevant history of court and casework action.

SAMPLE OF INFORMATION RECORDED ON THE TURNER/SEARS CASE

SOURCE OF INFORMATION	KINDS OF INFORMATION SOUGHT
Parent/Child Visitation	
• Homemaker's observations	Did Mrs. Sears play with Annie? Did she talk with her? Was she able to handle discipline?
• Caseworker's observations	Was Mrs. Sears at ease? Did she respond to Annie's needs? Was Annie comfortable? Did Mr. and Mrs. Sears maintain visitation schedule?
• Foster parent's observations	Did visits upset Annie? Does she look forward to visits?
• Instructor, parenting classes	Did Mr. and Mrs. Sears attend? Did they participate? Can you evaluate what they have learned?
• Child support payments	Were payments made regularly?
• County Mental Health Clinic	Attendance at appointments (none were kept)

Module 0: THE HOOVER FAMILY: A TERMINATION OF PARENTAL RIGHTS CASE

The Hoover Case illustrates one kind of case for which termination of parental rights is an appropriate action. It describes the events leading to termination of parental rights from the time the family first came to the attention of public agencies. Like the Turner/Sears case given in Unit 1, this family is in the "conduct" category of permanency planning cases, as described in Module 1.1, An Overview of Permanent Planning.

The case is included as an example of permanency planning in operation. It is referred to in exercises in the following modules:

Module 2.2	Termination of Parental Rights Statutes
Module 2.4	Preparing Evidence for Termination of Parental Rights Proceedings
Module 2.5	Who's Afraid of Perry Mason?: The Social Worker on the Stand

A slightly expanded version of this case, with some discussion of special issues in the case, can be found in Emlen, et al., Overcoming Barriers to Planning for Children in Foster Care, Regional Research Institute for Human Services, 1977.

Those using the modules may also want to introduce cases from a local child welfare agency, which reflect conditions of the area; caseworkers, in particular, may wish to use their own cases in the exercises.

THE HOOVER FAMILY*

The following case history describes the five-year relationship between the Hoover family and the Children's Services Division (CSD) in Clinton County, Oregon, from the family's first contact with CSD in 1971, to the termination of the parents' rights and adoption of the children in 1975 and 1976. This case exemplifies the kind of permanent planning case that caseworkers find most difficult to resolve, and that requires the most arduous casework services.

Summary of Events

1971	July:	Children were taken into custody, made wards of the court, and placed in CSD foster homes.
	Oct.-Nov.	Parents were out of touch with CSD for two months.
1972	Feb.-April:	Parents were in California.
	August:	Parents permanently separate. Mr. Hoover kept no more visits scheduled for him after this time, and had no further contact with his children.
	Aug.-Dec.:	CSD lost contact with Mrs. Hoover.
1973	Feb.-July:	Mrs. Hoover visited her children once a month.
	July-Dec.:	CSD lost contact with Mrs. Hoover.
	December:	Case was transferred to permanency planning worker.
1974	Jan.-May:	Mrs. Hoover visited her children once a month.
	June:	Mrs. Hoover moved to a neighboring state, and from there, she moved frequently but never again resided in Clinton County. She visited the children twice after this time.
	December:	Project decided to petition for termination of parental rights.

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*The names of people and places in this narrative are fictitious, but the case history is taken from an actual CSD case, and is not a composite.

1975	July:	Petition to terminate parental rights of Mr. and Mrs. Hoover was filed.
	October:	Mrs. Hoover's parental rights were terminated.
1976	January:	Mr. Hoover's parental rights were terminated.
	November:	Court of Appeals denied Mr. Hoover's appeal.
	December:	Children were adopted.

Casework Services: July, 1971 through December, 1973

Background. Clinton County, where the Hoovers lived, is a small, rural county in Western Oregon. There are twelve Children's Services caseworkers assigned there, who do protective services, adoptions, and crisis counseling as well as foster care placements. The juvenile court and CSD do not regularly cooperate in cases of mutual concern, and in the past the Circuit Court had resisted CSD's efforts to terminate parental rights in court. The county has some service agencies, but the distances between towns make it difficult to obtain professional counseling, psychiatric evaluations or treatment, or other services for multi-problem families. On the other hand, CSD workers make constructive use of informal information networks, helpful neighbors and friends, and para-professionals in order to rehabilitate disintegrating families.

Mr. and Mrs. Hoover were 22 and 23 years old, respectively, and had been married five years at the time their children were taken into custody. They had four children: Barbara, age 5; Philip, age 3; Sharon, age 2; and Jerry, age 2 months. Both parents had grown up in the Brownsville area, Clinton's county seat, and were living there when the children were removed from them. They had separated many times during their marriage and had frequently received public assistance. Both parents drank heavily, and were often drunk for two or three days at a time, either at home or in taverns. At these times, the children were usually left unsupervised.

July-December, 1971. In July, 1971, the Clinton County Health Department took the four Hoover children into custody in response to a community complaint. The children had been left in the care of an 11-year-old cousin while the parents were at a tavern. The children were dirty, inadequately clothed, and had skin rashes and burns. The baby had no bottle or diapers. The condition of the house, according to the landlord, was unliveable. The garbage consisted of "unused abundant foods, beer and wine bottles, and all kinds of junk and clothing. The upstairs rugs had to be discarded because they were hopelessly soiled with paint, ketchup and syrup. All the matresses. . . had to be taken to the dump because they were totally soiled with blood and urine. Dirty diapers were thrown all over the house and outside in the yard. They had plugged the toilets with clothing and used the whole house as a bathroom."

The children were made wards of the court, with care, custody, and supervision awarded to CSD. They were placed in foster homes, the baby with one family and the three older children with another. Three days later, the Hoovers contacted CSD. The caseworker assigned to them explained that the community would not allow them to leave the children unsupervised for days at a time while they were away. She also clarified with the Hoovers what would need to happen for the children to be returned to their care. The parents and caseworker would cooperate so that the parents could visit the children regularly, find a suitable house, get help learning how to take care of children, and be available for visits by the caseworker. Mr. Hoover, with the caseworker's assistance, would need to try to find work. The Hoovers seemed to understand why the children needed to be in foster care temporarily and agreed to undertake changes so the children could return home.

From July to November, 1971, the three older children (ages 2 to 5) were placed in five different foster homes, until their last placement stabilized into a satisfactory arrangement. The baby, Jerry, stayed in the same foster home in which he was originally placed until 1976.

1972. In the spring of this year, the Hoovers moved to California for three months. In August, after their return to Brownsville, they permanently separated. They visited the children three times in 1972. After the separation, Mr. Hoover never saw the children again. Mrs. Hoover dropped out of sight until January of the following year.

1973. In February, Mrs. Hoover contacted the agency, and visited the children once a month until July. She briefly had a job and found a house. Then she started drinking heavily again, and after July, she was rarely in contact with the agency until the following January.

During this two-and-a-half year period, neither Mr. nor Mrs. Hoover made progress in establishing a home for the children. The agency had had almost no contact with Mr. Hoover. Mrs. Hoover had made intermittent efforts to get work and find housing, but her excessive drinking undermined these attempts. She had visited the children about fifteen times in the two and one half years. Only the oldest child, Barbara, who was five years old when removed from her mother, remembered her at all. Mrs. Hoover was affectionate and concerned when she was with the children, but after visits with her they all showed symptoms of anxiety -- loss of appetite, bed wetting, and stubbornness. The youngest child, Jerry, had been only two months old when placed in foster care and was now nearly three. He invariably cried and clung to his foster mother during the first half hour of every visit. Whenever he got in the car with his foster mother, he said that he hoped they weren't going to Brownsville (the location of the visits). It seemed unlikely at this point that these children could ever return home; another permanent plan, preferably adoption, would need to be found for them.

Permanent Planning Casework Services: January 1974 to October 1975

In December, 1973, the Hoover case was transferred to Ms. Jan Minnis, a permanent planning worker.

January-May, 1974. By January, 1974, CSD had lost touch with both parents, but Ms. Minnis was able to locate them in the Brownsville area. Her first task was to write them an explicit letter, in which she explained that the children had been transferred to her because they had been in care too long, and asked the parents to consider either release of their children for adoption or a rehabilitation program, so that, separately or together, at least one parent could make a home for the children.

Mr. Hoover did not respond to this nor to subsequent letters or visits by Ms. Minnis. He remained unwilling to release the children, but never was able to make the 20 mile trip from his home to Brownsville to see the children, nor to find work and arrange a home for them. However, his actions showed that he wished to help make decisions that affected their lives. He refused to consent to any treatment for his older son's moderately deformed hand, as he was fearful that the doctors would simply amputate it. He finally agreed to consider releasing the youngest child for adoption, with the stipulation that Jerry be adopted by his foster parents. Unfortunately, this was not possible, as the foster parents were both retired and could not be sure that they could raise a three-year-old to maturity. Ms. Minnis continued to see or write letters to Mr. Hoover through 1974 and 1975, and regularly sent him calendars of scheduled visits with his children until the time of his termination hearing.

Mrs. Hoover came to the office immediately after receiving the letter. She said that she wanted the children very badly and agreed to work with Ms. Minnis on a rehabilitation program. They agreed to start modestly -- Mrs. Hoover would get a job (in the past she had worked for two or three weeks at a time as a waitress, nurse's aide, or bar maid) and a small apartment, so the oldest child could visit her there. Later, she would get a driver's license so she could transport herself the fifteen miles to the office for visits.

The first five months of 1974 were a period of intense casework activity with Mrs. Hoover. The following categories summarize the events of this period.

- Housing - Mrs. Hoover never succeeded in establishing a permanent residence. For much of this time she lived with her sister's family in a one-bedroom apartment. Her moves were not planned. Rather, she would suddenly move and the worker would begin immediately to search for her. She was usually with relatives within a 50-miles radius of Brownsville.

- Transportation - Mrs. Hoover never took steps to get her driver's license. The children, Mrs. Hoover, and the caseworker were located in four separate towns, all at least 15 miles away from each other, so much time was spent arranging transportation for visits with the children and for appointments with other agencies.

- Counseling - Mrs. Hoover expressed an interest in getting help for her personal problems, particularly her destructive drinking habits. In spite of pre-arranged transportation, Mrs. Hoover missed the three appointments made to mental health facilities in the area, causing them to refuse to give her further appointments. Ms. Minnis twice referred Mrs. Hoover personally to parenting classes, but she never attended.

- Employment - Mrs. Hoover never found steady employment. Her jobs were short-lived, and usually ended when she went on an extended drinking spree. She did not follow through on job interviews, in spite of CSD-provided transportation. She was referred to the Division of Vocational Rehabilitation several times but kept no appointments.

- Drinking - Mrs. Hoover continued her pattern of alternating periods (usually from one to three weeks) of sobriety followed by an extended drinking spree. In February she was in jail for three days on an alcohol-related offense. Her drinking undermined all rehabilitative efforts and made real progress impossible.

- Visits with children - Mrs. Hoover missed few visits with her children, although she rescheduled them frequently. She would ask to visit the children at times when she knew she could get a ride to Brownsville. Such requests were always granted, although the lack of a planned visiting schedule was disruptive to the children and foster parents, who never knew when they would be asked to come to Brownsville for a visit. The worker thought the oldest child, Barbara, now 8, had the best chance of any of the children of ever returning home, and so arranged for her to go to her mother's residence for an overnight visit. If successful, it would have been followed by other, longer visits. Unfortunately, the visit was a fiasco with missed connections, car breakdowns, and sudden changes of plan. This child was more attached to her mother than any of the children, but her behavior showed a great deal of ambivalence, and later in the year she started therapy to help resolve her feelings toward her mother. Of the older children, Philip was receiving treatment for his deformed hand, and Sharon needed absolutely consistent twice-daily medication to control grand mal epilepsy. It was thought unlikely that the mother could ever take on the medical appointments, which took place in a specialized clinic in Portland, 70 miles away, and other care necessary for these children. The youngest child seemed to have no ties to his mother, but still cried and showed fear whenever he saw her.

Casework Support. During this time the worker visited Mrs. Hoover at least once a week at her home. She also arranged to see her for at least 20 minutes when Mrs. Hoover came to the office to see the children. The case record shows that she saw or talked on the phone to Mrs. Hoover about every three days during these months, and wrote letters or made phone calls on this case daily.

June to December. In June, Mrs. Hoover decided to move to the state of Washington with her parents. She was increasingly anxious about her inability to accept services offered her, which she knew might result in the permanent loss of her children, and hoped she could straighten herself out at home with her parents. Her parents, the Knutsons, had requested that the children be placed with them, but a social evaluation obtained from the Washington CSD office indicated that the home would not be a suitable permanent placement for the children. Ms. Minnis strongly urged Mrs. Hoover to consider how she would build a relationship with her children from a distance of 200 miles. She doubted whether Mrs. Hoover on her own would seek out services in Washington, when she had been unable to accept the same services offered in Brownsville, even with strong, consistent support from her caseworker.

After she moved, Ms. Minnis called her at least weekly for a month to encourage her to find work, counseling, etc. When it became clear that she was not making progress, she asked the local CSD office in Washington to help Mrs. Hoover get service. With the help of this agency, Ms. Minnis and Mrs. Hoover arranged a written contract, listing what each party would do. It was hoped that this agreement would clarify the expectations of each party, which was especially important with Mrs. Hoover so far away.

Lillian Hoover would:

- Actively seek employment, and once this was obtained she would budget money to provide adequate food, shelter, and clothing for herself, and pay child support of $5 per child per month.
- Visit the children twice a month at the CSD office and notify the caseworker one day in advance if unable to come. (Visits would be difficult, of course, since the mother was now living out-of-state and would need to make a four-hour trip to see the children. But any reunification plan must be preceded by ample contact between parents and children, especially when there had been so little regular contact for a long time. The children needed to get well acquainted with their mother to mitigate the disruption of the move from the foster home to their own home.)

- Participate in family counseling and in an alcohol rehabilitation clinic.

- Participate in medical appointments in Portland for two of her children. (CSD agreed to get the children to Portland; Mrs. Hoover was to meet them there and accompany them to the clinic.)

- Remain at one address.

- Maintain adequate housekeeping standards.

CSD would:

- Work with Mrs. Hoover in any reasonable way to regain custody of the children.

- Arrange visits with the children every two weeks.

- Help Mrs. Hoover get assistance from other agencies and arrange transportation.

In September, Mrs. Hoover voluntarily entered an alcoholic rehabilitation clinic, but left three days before her release date. From this time on, she sought no further help, and moved frequently throughout Washington and Oregon. She never again resided in Brownsville. She came twice to visit the children, but at other times she would not appear at the scheduled time.

By December, it was clear that a petition would be filed to terminate the Hoover's rights on all the children. The rehabilitation plan had operated for a year, with no progress made toward reuniting the family. Both parents had been asked to release voluntarily their rights to the children, but they had refused. The decision to pursue termination was made only after reviewing the details of the case carefully with a number of colleagues -- her local supervisor, Clinton County caseworkers who knew the family, and others in the legal and social service community.

1975. Ms. Minnis began preparing the case for the court hearing. She had documented each step of the treatment program, including all efforts to contact the parents and to put them in touch with other agencies, and had also documented their repeated failure to respond. She found witnesses, helped them prepare their testimony, filed the termination petition drawn with the assistance of the children's attorney, and obtained a court date.

Termination of Parental Rights

Lillian Hoover. The hearing on the petition to terminate the mother's parental rights was scheduled for October 3 and 28. Sam Hoover appeared at the October 3 hearing but did not have an attorney, even though he had been notified that he would need one. His hearing was rescheduled for January, 1976.

The mother's attorney argued that she could care for her children and expressed doubt that CSD was sufficiently expert in working with her special problems. A psychologist for the defense testified that he found nothing in his examination or tests which would indicate that Mrs. Hoover could not care for the children. He testified that if she had psychological counseling, money due her from an inheritance, and family support, she could care for the children.

The state (represented by an assistant district attorney) and the children's attorney argued that since no progress had been made toward reuniting this family in the four years and three months the children had been in foster care, enough time had been allowed, and the mother's parental rights should be terminated. The children's attorney emphasized that, whatever the reasons for Mrs. Hoover's inability to respond to services, the children could not wait indefinitely for her to succeed in establishing a home. By this time, they did not really consider Mrs. Hoover as their mother, and it was in the best interests of the children that they be adopted and have parents of their own.

They presented a summary of Mrs. Hoover's past behavior relevant to her ability to be a mother -- her patterns of visiting, changes of residence, efforts to control drinking, attempts to find employment, lack of attendance at parenting classes and counseling sessions, and her inability to provide for the children's physical needs. A psychologist who had evaluated both the children and the mother testified that it was his belief that Mrs. Hoover could not be an adequate mother to the children. A few days later the court decided to terminate the parental rights of Lillian Hoover to her four children.

Samual Hoover. In January, 1976, the termination hearing for Sam Hoover was held before the juvenile court judge. The state and the children's attorney argued that the father's parental rights should be terminated since he had not made the changes necessary to permit the return of his children. The testimony included evidence that he had rarely kept visiting appointments, had not found a job and payed support, and that he had made very little effort to care for the children's physical or emotional needs. Mr. Hoover's attorney argued that he had re-married, settled down, and would soon be able to care for the children.

His parental rights were terminated, but Mr. Hoover appealed the decision. In November, 1976, the Oregon Court of Appeals upheld the circuit court decision. He then appealed to the Oregon Supreme Court, which refused to review the case.

The three older Hoover children have been adopted by their foster parents. The youngest child, Jerry, had lived with his foster parents from the time he was taken into foster care at the age of 2 months until he was five years old. Since these foster parents are retired and could not adopt him, he has been adopted by new parents, with the understanding that his former foster parents can visit him as "foster grandparents."

TEACHING RESOURCES:

In this module:

- Chart and Article: "Sequence of Hearings Leading to Termination of Parental Rights"
- Chart and Article: "Erosion of Parental Rights," by Mark Hardin
- Excerpt of article: "State Intervention on Behalf of 'Neglected' Children: Standards for Removal of Children from their Homes, Monitoring the Status of Children in Foster Care, and Termination of Parental Rights," by Michael S. Wald
- Article: "If You Care About Children, Then Care About Families," by Arthur C. Emlen
- Termination of Parental Rights in your Juvenile Court, Suggestions for Further Study

Other Resources:

- Information on juvenile court procedures relating to custody hearings and termination of parental rights in your community.
- Guest speaker: a judge or court counselor from the juvenile court to discuss how termination of parental rights is handled and for what kinds of cases it is considered appropriate.

GENERAL LEARNING OBJECTIVES:

The materials in this module are designed to help the students to:

- understand some of the problems with foster care drift and the use of termination of parental rights as a child welfare resource;
- understand the legal process leading to termination of parental rights; and
- learn about termination of parental rights as it is used in their own juvenile court system.

TEACHING STRATEGIES:

This module introduces termination of parental rights in a legal context, as part of the juvenile court system and as one of several possible actions the court can take on behalf of dependent children. Termination of parental rights is an unusual, serious, legal procedure; it is important for students to know what the actual legal results of termination are, and to begin considering how such a drastic step can be used appropriately, and with all safeguards that due process can give.

The first two articles can be used as a starting point for study by the students on their own juvenile court. They can adapt the charts that precede each article to the circumstances of their own court; ideas for doing this are in Questions 1 and 2 of the suggestions for further study that end the module. For use in class, the articles can be passed out to the students and read ahead of time. Then, a guest speaker, such as one suggested above, can use the articles to prepare a presentation on the local juvenile court system, as each court varies somewhat from the general descriptions given here.

The excerpt of the article by Michael Wald is intended to give students an understanding of the unresolved issues surrounding state intervention into the lives of families and particularly termination of parental rights. Along with articles suggested in Further Reading and in the footnotes to the Wald article, this excerpt should provide a basis for class discussion and clarification of values on this controversial topic.

The final article in this module, by Arthur Emlen, does not have a legal focus; it is included to make the point that termination of parental rights, while a legal action, needs to be considered as one service among many to be used with intelligence and caution by those in the field of child welfare.

The suggestions for further study at the end of the module should give ideas for classroom discussion and for class projects.

FURTHER READING:

- Burt, Robert, "Forcing Protection on Children and Their Parents," Michigan Law Review, Vol. 59, p. 1259 (1971). Burt, a specialist in law and psychiatry, presents his analysis of the constitutional aspects of child protective proceedings. The article is both scholarly and penetrating.

- Burt, Robert, "Developing Constitutional Rights of, In and For Children," Law and Contemporary Problems, Vol. 39, p. 118 (1975). A broader analysis of the constitutional interests involved in state action that intrudes into families; particularly interesting discussion of rights of children in relationship to their parents. (Also in Symposium, below)

- "Foster Care: Problems and Issues," Hearings before the Subcommittee on Select Education of the Committee on Education and Labor, House of Representatives, 94th Congress, 2nd Session - in two parts, held September 8, 1976. These volumes contain testimony, reprinted articles (including Mnookin's below), a model brief and opinion, and other valuable information on foster care.

- Ketcham and Babcock, "Statutory Standards for the Involuntary Termination of Parental Rights," Rutgers Law Review, Vol. 29, p. 530 (1976). Well reasoned and documented article on considerations and problems in termination of parental rights statutes.

- Mnookin, Robert, "Foster Care - In Whose Best Interest?", Harvard Educational Review, Vol. 43, p. 599 (1973). Mnookin, along with Burt and Wald, is one of the leaders in this field. This article is an excellent description of the problems in foster care and the legal questions they raise; written for a professional but non-legal audience.

- Mnookin, Robert, "Child-Custody Adjudication: Judicial Functions in the Face of Indeterminacy," Law and Contemporary Problems, Vol. 39, p. 226 (1975). Expanded version of the above, for a legal audience. Brilliantly done.

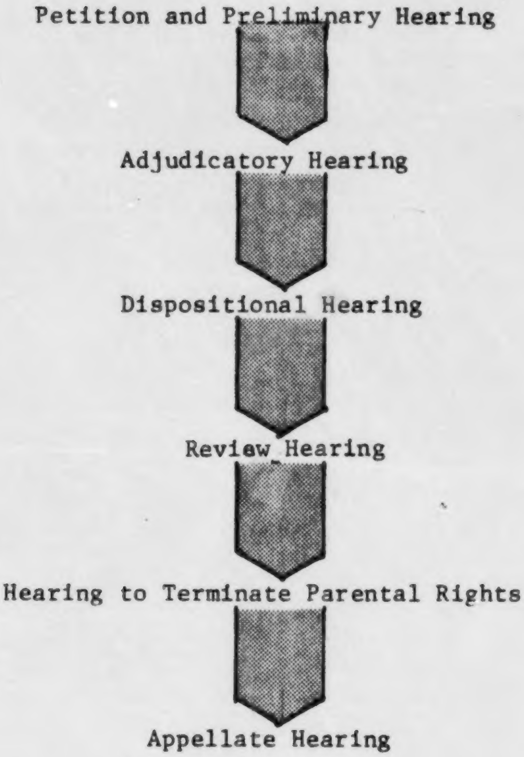
- Symposium, "Children and the Law," Law and Contemporary Problems, Vol. 39 (1975). Contains the previous article by Mnookin, one of Burt's, and several other worthwhile articles.

- ten Brock, "California's Dual System of Family Law: Its Origins, Development and Present Status," in Stanford Law Review in three parts: part I, Vol. 16, p. 257 (1964); part II, Vol. 16, p. 900 (1964); part III, Vol. 17, p. 614 (1965). A classic historical and legal analysis of the development of child welfare services as a "class-based intrusion into the family life of the poor."

- U.S. Supreme Court, Smith v. Organization of Foster Families for Equality and Reform, United States Law Week, Vol. 45, p. 4638 (1977). Despite the fact that it is an odd legal analysis, this case contains a very well-done survey of foster care problems, and a good summary of the available legal literature. It is also the only Supreme Court case wholly concerned with foster care.

- Wald, Michael, "State Intervention on Behalf of 'Neglected' Children: A Search for Realistic Standards," Stanford Law Review, Vol. 27, p. 985 (1975). This lays the groundwork, meticulously, for Wald's proposed statutory standards; uses both law and social science studies.

CHART AND ARTICLE: SEQUENCE OF HEARINGS LEADING TO TERMINATION OF PARENTAL RIGHTS


Petition and Preliminary Hearing
Adjudicatory Hearing
Dispositional Hearing
Review Hearing
Hearing to Terminate Parental Rights
Appellate Hearing

SEQUENCE OF HEARINGS LEADING TO TERMINATION OF PARENTAL RIGHTS*

Termination hearings rarely occur without previous legal actions; they may be thought of as the last in a series of increasingly serious legal decisions. The legal steps and procedures necessary to obtain termination of parental rights help ensure that the rights of both parents and child are protected. If termination of parental rights is the final outcome of the court's and child welfare agency's involvement with a family, it should have been reached through an orderly progression of events, with all the safeguards our legal system allows.

The following pages explain the types of hearings that may take place in the juvenile court on foster children, from the filing of a dependency petition through termination of parental rights and adoption. The chart above shows the hearings in their usual sequence although local practice varies. Not every child for whom a dependency petition is filed will be subject to each one of the hearings shown on the flow chart, and only a very few will be involved in the last hearings shown on termination of parental rights and adoption. A case may be delayed, reviewed, or closed at any of several points in the process, by the social worker (as petitioner), the parents, or the judge.

Petition and Preliminary Hearing

To change the legal custodian of a child, either temporarily or permanently, you must first take the case to the local court that hears cases regarding juveniles. The first step in making a child a ward of the court is the filing of a petition with the court that alleges abuse, neglect, dependency, or other grounds listed in the state statute. Specific information on who, when, and where the action took place must supplement the allegations.

The petition may be filed before or after a preliminary hearing, depending on local practice and on the circumstances of the child at intake. In some jurisdictions, a preliminary hearing is not necessary if the child remains in his own home, but may be routine in cases where the child is in emergency care. Generally, the purposes of a preliminary hearing are to make an initial determination on whether the child needs to remain in care or return home with or without further court action, and to inform the parents of the situation, make sure they understand their rights, and explain what further action is pending.

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*Based on The Legal System, by the Child Protective Service Instructional Development Project, The Department of Social and Health Services, State of Washington, and by the School of Social Work, University of Washington, 1977.

At the preliminary hearing the judge will review both the background and current status of the case. The caseworker's function is largely to provide information on the case to the judge. The judge might ask the worker such questions as:

- "Why was the child removed from his home?"
- "Where is the child now?"
- "What do you recommend for the child?"
- "What is the child doing?"
- "Can the child stay where he is until the next hearing?"

The result of the preliminary hearing will be either that the case is dismissed and the court plans no further action, or that the case will proceed to the next phase, the adjudicatory hearing.

Adjudicatory Hearing

The adjudicatory (also called jurisdictional or fact-finding) hearing decides whether the allegations of the petition are sufficient to warrant court action, and if so, whether they are true. Expressed in legal terms, the prupose of the hearing is to determine whether the facts justify court jurisdiction, and the child needs protection through court wardship.

The fact-finding hearing generally takes place in a courtroom with attorneys, defendants, and witnesses present. Especially if the parents contest the allegations of the petition and have legal representation, the hearing may take on many of the characteristics of a full-blown civil trial, including technical limitations on the use of evidence.

The child welfare worker involved in the case may be an extremely important participant. The judge may have little background on the case and will depend on the worker to provide as much information as he can to help him make a decision regarding the child.

- "What is the situation in the home?"
- "When did you first observe the family situation?"
- "Who was present?"
- "How often have you visited the home?"

After the petitioner has presented all the relevant information (in person and through witnesses) and the parent (through his attorney) has had a chance to cross examine and present witnesses for the other side, the judge will make a decision. If the petitioner has presented sufficient evidence to support the petition, the judge will make the child a ward of the court and a date will be set for the dispositional hearing; otherwise, the case will be dismissed.

Dispositional Hearing

If, at the adjudicatory hearing, sufficient evidence was presented for the court to take further action in the case, a dispositional hearing will be scheduled. It may follow the jurisdictional hearing immediately or be set at a later time. Prior to this hearing, a worker will submit a summary report and recommendations to the court worker to aid the judge in making a disposition. The dispositional hearing is generally informal and technical rules of evidence do not apply. Refer to Module 2.4 for discussion of standards of evidence for different hearings.

At the dispositional hearing the judge will relate his decision concerning the child. He will usually rule in one of the following ways:

- The child is to be removed from the home, with temporary custody to the child welfare agency.
- The child may remain in the home, but the parent must attend counseling sessions, parenting classes, Parents Anonymous meetings, etc.
- The child may remain in the home under the supervision of the child welfare agency.
- Other dispositions: placement in an institution, with relatives, guardianship, or even, if the evidence warrants, termination of parental rights.

The disposition may call for a review in three or six months, to see what progress has been made.

Review Hearing

The review hearing allows the worker to present any additional facts about the child and family that have entered the case between the time of the disposition and the review hearing. The parent will also present his viewpoint at this hearing. The judge will then review the evidence submitted by both sides and determine the further dispositions of the case.

The review hearing is a monitoring mechanism. It can be used when the Court feels that supervision should be continued, reviewed, or the court order changed. The review hearing can also be used as a device to resolve controversies between the agency and parent, when the agency has custody, such as a dispute over visitation. An agency might initiate a review hearing in order to gain a parent's cooperation. Review hearings may take place automatically at a certain interval depending on state law. In some states, either the agency or the parents may initiate a review hearing at any time.

Technically review hearings after disposition can be repeated indefinitely (or at least until the child becomes an adult) as a formalized system of monitoring a family and child. But judges are becoming less and less willing to continue foster care for children indefinitely, and may use the review hearing to monitor casework progress toward a permanent solution for the child.

Review hearings are often central in making a decision on whether or not to petition for termination of parental rights. The hearing can clarify expectations of all parties, and allows the judge to become familiar with the facts of the case. The worker should present to the court in advance a summary of all important events in the case, with emphasis on the parent's progress (or lack of it) toward creating a home for the child, and an assessment of the child's adjustment.

Hearing to Terminate Parental Rights

A hearing to terminate parental rights is usually a formal proceeding like the adjudicatory hearing. When contested, it can be lengthy and make use of many elaborate, technical, legal procedures. Strict rules of evidence usually apply, and witnesses are formally examined and cross examined. The parents are represented by counsel; attorneys for the state, the agency, and the child may also be present. The judge who hears the case will decide the issue on the weight of evidence presented by both sides. The hearing is usually preceded by formal notice to parties in the form of summonses and by subpoenas, dispositions, and preparing witnesses and other evidence. See Module 2.5 for a chart showing the stages of a termination of parental rights hearing.

The caseworker is a key figure in a plan to attempt termination of parental rights through the court.

Caseworker's Role

At the point that the legal community becomes involved in the case, your role as caseworker changes substantially, as attorneys and judges will make the decisions governing the conduct of the case, and your work will consist of helping them to the extent they allow.

Decisions will be made on the basis of legal requirements and possibilities, rather than on good social work practices. The two do not necessarily conflict, but there may be occasions in which the law requires actions that seem harmful to parents or children.

In spite of these limitations, successful termination cases nearly always depend on the perseverance and astuteness of the caseworker. The caseworker, who sees firsthand the damage that delay does to children, is the most highly motivated of the court participants to have the hearing take place and a decision reached. Conversely, it is in the parents' interests that the decision be delayed as long as possible, and you can expect the parents' attorney to try to confound the orderly progression of events. Your tenacity, tact, and coordinating ability will assist greatly in overcoming delays and in making a strong case for termination

Caseworkers serve as petitioners, legal investigators to the petitioner (district attorney, juvenile court, and/or child's attorney), as coordinators of activity, and as witnesses at the hearing.

from Victor Pike, et al. Permanent Planning for Children in Foster Care: A Handbook for Social Workers.

After the judge has made a decision, the losing party may appeal. If no one does, then the decision stands, and, if the judge awarded termination, the worker can move into adoption planning for the child.

Appellate Hearing

Appeals are heard by the court of appeals in each state. A state may have a single appellate court called the state Supreme Court, or it may also have an intermediate court typically called the state Court of Appeals. Depending on the state, the appellate court may choose whether or not to hear the case, and whether or not to take into account all the evidence presented at the lower court or simply review the record for serious procedural errors. In any event, the court looks only at the written records; witnesses are not re-called to testify again. The attorneys for each side each make a formal oral argument to the court, after which the court decides whether to affirm or reverse the lower court's decision. The written opinion of the court becomes part of the law on the subject of termination of parental rights. Courts are expected to be guided by the written opinions of previous appellate court decisions.

EROSION OF PARENTAL RIGHTS

	Legal Status						
Parental Rights and Duties	Full Custody (parents)	Protective Supervision	Physical custody only	Foster Care	Third-party custody	Termination of parental rights	Full custody (adoptive parent)
Care and companionship of the child	▨	▨	▨				▨
Freedom from court or child welfare agency supervision	▨				▨		▨
Right to hearing prior to removal of child from parental home	▨	▨		N/A	N/A	N/A	▨
Duty of support and right to visit	▨	▨	▨	▨	▨		▨
Major decision such as surgery, marriage, or military service of child	▨	▨	▨ (Generally	▨ Generally			▨
Right to seek return of parental rights in court	▨ N/A	▨	▨	▨	▨		▨ N/A

N/A indicates that the right or duty is inapplicable
Shaded area indicates rights and duties exist
A blank space indicates that the right or duty is lacking

EROSION OF PARENTAL RIGHTS

by Mark Hardin, J.D.
Permanent Planning Project

Society has established certain rights and duties of parents, which balance the need for the autonomy of the family unit against society's obligation to protect children. The balance leans heavily in favor of parental authority and discretion, as our society and laws assume that parents are generally more capable of proper care and control of children than is the state, and that state interference in the family has the potential for great harm.

However, when parental inadequacy becomes severe, society intervenes on behalf of the child. The weight in the balance of parental autonomy and society control shifts, and parental authority is eroded in favor of more supervision by the state. Ultimately, control over the child may be given over to other private individuals, who perform the role once performed by the parents. For parents whose inadequacy is particularly extreme and untreatable, the erosion may be progressive and even lead to the termination of the parent's rights and subsequent adoption. Other parents, able to improve, may have their parental rights partly or completely restored.

The chart shows graphically different kinds of legal status regarding children, and the parental rights and duties that attach to each. The first column represents the situation where all parental rights are left untouched. Columns 2, 3, and 4 show different court orders regarding parental rights and duties in those cases where the juvenile court has taken jurisdiction. Third party private custody (column 5) is used in this chart to represent a form of out-of-home case which the state does not supervise, and which retains a continuing role for the parents. Column 6 shows the total absence of the natural parents' rights, a necessary prelude to legal adoption (column 7).

Column 1 Full Custody (Parent)

This column shows the basic rights that parents have in regard to their children. The parents retain full custody, and the children are not subject to the jurisdiction of the juvenile court.

Column 2 Protective Supervision

When the juvenile court has determined through a formal proceeding that it has jurisdiction over a child not receiving proper care, certain parental rights are invariably eroded.

Protective supervision means that the juvenile court has jurisdiction over the child, but the child remains with the parent by court order. The child cannot be removed without a further court hearing. But the parent must cooperate and submit to the supervision of the child welfare agency as specified in the court order.

Column 3 Physical Custody Only

When jurisdiction has been established, sometimes the court will grant legal custody of the child to the child welfare agency, which may determine where the child lives. Column 3 shows the situation in which the agency leaves the child with his parents, who then have physical, but not legal, custody. In most states, the agency can remove the child from his parents' home without a further court hearing, in contrast to the situation in Protective Supervision, where a hearing is necessary before the child is removed.

Column 4 Foster Care

This status occurs when the court either orders foster care placement or grants the child welfare agency legal custody and the agency places the child. In either case, parental rights and duties are the same. The parent cannot live with the child but normally is permitted to visit and required to pay support. The parent retains the right to request that the court return the child to their care, and to share in planning the visiting and support schedules. This status is different from the situation in which parents voluntarily place their children in foster care and no court proceeding is brought. Without a formal court proceeding, voluntary foster care does not affect the legal rights and duties of parents, although the fact of foster care may have bearing if a hearing does subsequently take place.

Column 5 Third Party Private Custody

Although it is seldom done, a child is sometimes withdrawn from juvenile court jurisdiction and a private guardian is appointed. The rights of the parent in this case are basically the same as those of the out-of-custody parent in a divorce. Guardians may be relatives, especially grandparents, family friends, or, sometimes, former foster parents who change to this more permanent status of guardian. All significant decisions regarding the child are made by the guardian, who is also responsible for the daily care of the child. Neither the juvenile court nor the child welfare agency have authority over the child or guardian. The parent can seek return of the child, in the same way as an out-of-custody parent can sue for custody.

Column 5 Termination of Parental Rights

When parental rights are terminated, the parent loses permanently all rights to and responsibilities for the child, including the right to ask the court to change its decision. Termination of parental rights is normally ordered in contemplation of a subsequent adoption by other parents.

Column 7 Full Custody (Adoptive Parent)

The person who adopts the child obtains all the rights to care and control that originally attached to the biological parents. Compare columns 1 and 7.

EXCERPT OF ARTICLE: "STATE INTERVENTION ON BEHALF OF 'NEGLECTED' CHILDREN: STANDARDS FOR REMOVAL OF CHILDREN FROM THEIR HOMES, MONITORING THE STATUS OF CHILDREN IN FOSTER CARE, AND TERMINATION OF PARENTAL RIGHTS"

by Michael S. Wald

Each year approximately 150,000[1] child "neglect"[2] proceedings are heard by juvenile courts throughout the country. These proceedings are instituted to protect children who are not being cared for adequately by their parents. Upon finding a child neglected, a court can order that the parents accept

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[*] © 1976 by Michael S. Wald.

I am indebted to a large number of persons for their comments on earlier drafts of this Article. I wish to thank Judith Areen, Barbara Blum, Paul Brest, Robert Burt, Leon Chestang, Guadalupe Gibson, Joseph Goldstein, Alan Keith-Lucas, Robert Levy, Eleanor Maccoby, Richard Markovits, Robert Mnookin, Justine Wise Polier, Robert Rabin, Robert Sears, Ann Stanton, and especially Johanna Wald. I have benefited greatly from their comments, although they would not all agree with some of the positions advocated in this Article.

This Article was prepared in connection with the author's work for the Juvenile Justice Standards Project of the Institute of Judicial Administration and the American Bar Association. The project is supported by grants from the National Institute of Law Enforcement and Criminal Justice, the American Bar Endowment, the Andrew W. Mellon Foundation, the Vincent Astor Foundation, and the Herman Goldman Foundation. The views expressed herein are those of the author and do not necessarily represent positions of the Juvenile Justice Standards Commission, the sponsoring organizations or the funding sources.

The research was also supported, in part, by funds from The Boys Town Center on Youth Development at Stanford. However, the opinions expressed or the policies advocated do not necessarily reflect those of Boys Town.

The proposals made in this Article are part of a complete set of standards for state intervention on behalf of neglected children that have been developed by the author in his capacity as a co-reporter, with Professor Robert Burt, for the American Bar Association Juvenile Justice Standards Project. These standards have not yet been adopted by the American Bar Association and the proposals here are only the author's.

I have developed the rationale for part of the standards in a previous Article: Wald, *State Intervention on Behalf of Neglected Children: A Search for Realistic Standards*, 27 STAN. L. REV. 985 (1975). The reader might find it useful to consider the two Articles together.

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[1] U.S. DEP'T OF HEALTH, EDUCATION AND WELFARE, JUVENILE COURT STATISTICS 1973, 12–13 (1975).

[2] State statutes establishing juvenile court jurisdiction often make separate reference to dependency, neglect, and abuse. In "dependency" cases, parents, through no fault of their own, are unable to care for a child. "Neglect" and "abuse" generally both involve "fault" on the part of the parents; "abuse" usually refers to willful injuries to the child, while "neglect" refers to inadequate parental care. Throughout this Article the term "neglect" will be used to refer to all three classes of cases.

supervision and therapy as a condition of continued custody, or can order that the child be removed from her home and placed in a foster home, group home, residential treatment center, or institution.[3] The best available data indicate that as many as 50 percent of neglect proceedings result in removal of the child from the natural parents' home.[4]

Unless parental rights are terminated permanently[5] upon removal, the child's stay in foster care is intended to be temporary; the parents retain the right to resume custody at a later date.[6] However, the existing foster care system is not, in fact, a temporary one.[7] There is probably a 50 percent chance that a child will remain in foster care for three years or more.[8] Data from one state indicate that as many as 80 percent of children never return home following removal.[9] In a small percentage of cases where the child is not returned to the natural parents, parental rights are terminated eventually and the child is placed for adoption.[10] In the remaining cases the child may be subjected to frequent changes of placement[11] or may be returned to a natural parent after living many years with a single foster family.[12]

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[3] The term "foster care" will be used to refer to any system providing 24-hour care outside a child's parental home where the child has entered care through the juvenile justice system. It includes children placed in relative or non-relative foster family homes, group homes, or other residential care facilities.

[4] *See* Mnookin, *Foster Care—In Whose Best Interest?*, 43 Harv. Ed. Rev. 599, 606 (1973). *But see* M. Burt & L. Blair, Options for Improving the Care of Neglected and Dependent Children 35 (1971) (only 27% of the proceedings in Nashville, Tennessee, resulted in removal; one-half resulted in no further court or agency action). In many places social workers only bring court cases when they are requesting removal. Not all neglect proceedings involve children living with their natural parents. Some are living with relatives or in foster homes.

There are over 300,000 non-delinquent children presently in foster care under state supervision. *See* U.S. Dep't of Health, Education & Welfare, Children Served by Public Welfare Agencies and Voluntary Child Welfare Agencies and Institutions, March 1970, table 6 (1972). The number of children in such care has been increasing steadily; it doubled between 1960 and 1970. *See id.*

Some children enter state supervisory care as a result of the parents' decision to place them with a public or state licensed private child care agency. The parents and the agency enter into an agreement through which the parent turns over custody of the child to the agency, which then puts the child into a foster home or institution. There is no court involvement in the process. In some states as many as 90% of all placements may be "voluntary." *See* Levine, *Caveat Parens: A Demystification of the Child Protection System*, 35 U. Pitt. L. Rev. 1, 26–29 (1973). *See also* California State Social Welfare Board, Children Waiting 7 (1972).

"Voluntary placements" are not always truly voluntary, however. The parents may be led to believe that placement is legally required. *See* Campbell, *The Neglected Child: His and His Family's Treatment Under Massachusetts Law and Practice and Their Rights Under the Due Process Clause*, 4 Suff. U.L. Rev. 631, 649–51 (1970); Levine, *supra* at 23. Moreover, once the child is placed, the parent may be unable to secure the child's return. *See* Campbell, *supra*, at 647; Levine, *supra*, at 24; Weiss & Chase, *The Case for Repeal of Section 383 of the New York Social Services Law*, in Legal Rights of Children 37 (1973).

Many other children live apart from their parents without any state involvement. They are placed by their parents in settings ranging from private boarding schools to private psychiatric hospitals. In addition, a number of children are in placement because of their delinquent behavior. This Article focuses only on children who are under court supervision as a result of neglect proceedings.

[5] *See* notes 45–67 *infra* and accompanying text for a definition and discussion of termination of parental rights.

[6] This right is subject to court approval. *See* notes 38–42 *infra* and accompanying text. *See also* U.S. Children's Bureau, Legislative Guides for the Termination of Parental Rights and Responsibilities and the Adoption of Children 3–4 (1961). In theory, parents are provided services to enable them to rehabilitate themselves so that they can resume custody. The social service agency supervising the child and parents is supposed to be working toward early reunion. *See* A. Kadushin, Child Welfare Services 423 (2d ed. 1974). In practice these services are rarely provided. *See* notes 219–23 *infra* and accompanying text.

[7] This fact is well recognized in the literature. *See* A. Gruber, Foster Home Care in Massachusetts: A Study of Foster Children, Their Biological and Foster Parents (1973); E. Sherman, R. Neuman & A. Shyne, Children Adrift in Foster Care: A Study of Alternative Approaches 1–9 (1974); Rein, Nutt & Weiss, *Foster Family Care: Myth and Reality*, in Children and Decent People 24, 37–39 (A. Schorr ed., 1974). The Gruber study is a particularly useful picture of the operation of the system in one state, Massachusetts.

I have relied on a number of such studies in arriving at the conclusions in this Article. While the footnote references are to specific pages, I have generally based my conclusions on the overall picture presented by each study rather than any one specific finding.

It is widely acknowledged that the present system of intervention, rather than working as envisioned, unnecessarily harms both parents and children.[13] On the one hand, parents who want their children are deprived of them without being offered services that might eliminate the need for removal and spare both the child and parents the trauma of separation. Nor are they provided with resources to enable them to resume custody following removal. On the other hand, children who are unwanted by their parents, or whose parents cannot manage to resume custody, are denied permanent homes.

Part of the current problem stems from inadequate funding of social service programs, making proper administration of existing laws impossible.[14] However, additional funds alone will not solve the problems with the existing system. Fundamental rethinking of the assumptions of the entire intervention system is necessary. New laws and administrative procedures must be devised that reflect and facilitate a set of consistent goals for the entire process of state intervention on behalf of neglected children.

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[8] In the past twenty years there have been a number of major studies focusing on the length of time children remain in foster care. The studies vary in quality and comprehensiveness. The findings from these studies and their methodological limitations are discussed in note 107 *infra*. The major studies are: California Legislature Joint Legislative Audit Comm., Report on the State's Role in Foster Care in California No. 148.2 (1974); A. Gruber, *supra* note 7; H. Jeter, Children, Problems and Services in Child Welfare Programs (1963); H. Maas & R. Engler, Children in Need of Parents (1959); E. Sherman, R. Neuman & A. Shyne, *supra* note 7; Fanshel, *Status Changes of Children in Foster Care: Final Results of the Columbia University Longitudinal Study*, 55 Child Welfare 143 (1976); Maas, *Children in Long-Term Foster Care*, 48 Child Welfare 321 (1969).

All of these studies focused both on children in care as a result of a court order following a finding of neglect and children placed "voluntarily." Thus the data may vary if only court-ordered cases were analyzed.

[9] *See* A. Gruber, *supra* note 7, at 17; H. Maas & R. Engler, *supra* note 8, at Appendix C.

[10] Good statistics on the number of children adopted from foster care are even harder to obtain than figures about children in foster care. Most studies show that fewer than 10% of children in foster care are adopted. *See* M. Burt & L. Blair, *supra* note 4, at 83; A. Gruber, *supra* note 7, at 19; H. Maas & R. Engler, *supra* note 8, at 418–19; E. Sherman, R. Neuman & A. Shyne, *supra* note 7, at 50.

[11] For a discussion of multiple placements, see notes 107–08 *infra* and accompanying text.

[12] In a number of cases parents have reclaimed custody after a child has been in the care of a single foster family for many years. *See, e.g.*, *In re* S.K.L. v. Smith, 480 S.W.2d 119 (Mo. Ct. App. 1972); N.Y. Times, Feb. 25, 1976, at 39, col. 6. *See also* Goldstein, *Why Foster Care—For Whom For How Long?*, 30 Psychoanalytic Study of the Child 647, 651 (1975).

[13] The critical literature is vast. For some representative works, see A. Gruber, *supra* note 7; A. Kadushin, *supra* note 6, at 468; B. Mandell, Where are the Children? (1973); E. Sherman, R. Neuman & A. Shyne, *supra* note 7; Maluccio, *Foster Family Care Revisited: Problems and Prospects*, 31 Pub. Welfare, Spring 1973, at 12; Mnookin, *supra* note 4; Wiltse & Gambrill, *Foster Care, 1973: A Reappraisal*, 32 Pub. Welfare, Winter 1974, at 7.

[14] At least one commentator asserts that as long as neglect proceedings and foster care affect primarily poor and minority children, adequate fundihg remains unlikely. See Schorr, *Poor Care for Poor Children—What Way Out?* in Children and Decent People, *supra* note 7, at 186, 192.

This Article focuses on the decisions that have to be made following a court determination that a child is neglected.[15] I propose new statutory standards for determining when a neglected child should be removed from her home, when to return a child in foster care to her parents, and when parental rights should be terminated, thereby freeing a child for adoption, guardianship, or placement in a permanent foster home.

Each of the proposals must be viewed in the context of the overall system proposed. Termination is the last act in a production that begins by labeling a child neglected. Standards for termination must be related to the standards for removing children and for returning them to their parents in order to achieve a systematic and sensible intervention process.[16]

This Article first describes the current system. It next discusses the inadequacies in existing laws regarding removal of children and proposes new standards for determining when a neglected child should be removed from her home. It then discusses the procedures that should be followed after removal and proposes standards for returning children and termination of parental rights.[17]

I. DESCRIPTION OF THE EXISTING SYSTEM

Most state statutes provide few standards to guide courts and welfare agencies in making any of the decisions addressed in this Article. Actual practices vary significantly among the states, within a state and even within an agency.[18] Thus, any description can present only a partial picture of the system.

A. *Bases for Intervention on Behalf of Neglected Children*

All states have statutes authorizing court intervention to protect neglected children. These statutes are extremely broad and vague regarding the bases for intervention.[19] Rather than defining jurisdiction in terms of specific harms to the child, current statutes focus on parental behavior, such as abandonment, physical abuse, inadequate supervision or housekeeping, emotional neglect, inadequate parenting, sexual abuse, failure to provide medical care and immoral or unconventional conduct.[20] Intervention occurs to protect children from harms ranging from severe physical beating to living with parents who are not legally married or who are poor housekeepers. Probably fewer than 10 percent of all court cases involve physical abuse; the rest involve abandoned children or claims that the children are not being adequately cared for.

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[15] The basic assumptions of my proposed standards for initial intervention are discussed in Wald, *State Intervention on Behalf of "Neglected" Children: A Search for Realistic Standards*, 27 STAN. L. REV. 985, 989–1000 (1975). All of the standards proposed in that Article and this one can be found in the Appendix *infra*.

[16] Because existing legislation fails to provide an interrelated system, courts often decide individual cases in a manner that may make sense in the context of the specific case but constitute "bad" law from the perspective of the workings of the entire system. *See* note 253 *infra* and accompanying text.

[17] The Article focuses primarily on substantive issues. However, implementation of the proposals will require procedural changes as well. A number of such changes are proposed in R. Burt & M. Wald, Tentative Standards for State Intervention on Behalf of Neglected Children, January, 1976 (submitted to the American Bar Association Juvenile Justice Standards Project).

[18] There are very few sources describing current practices in neglect proceedings. The best summaries are found in D. BESHAROV, JUVENILE JUSTICE ADVOCACY 114–153 (1974); S. KATZ, WHEN PARENTS FAIL 22–51 (1971); M. MIDONICK, CHILDREN, PARENTS, AND THE COURTS: JUVENILE DE-

Most parents labeled neglectful are poor, many are on welfare.[21] Frequently they are single parents. Many suffer from physical or mental illness, drug addiction or alcoholism. The parents are often isolated from other people in their community. While the majority of children declared neglected are Caucasian, children from minority groups are disproportionately represented.[22]

B. *The Adjudication Process*

Neglect proceedings are set in motion by a complaint to a court, police department or child welfare agency from a hospital, neighbor, relative, school teacher, or social worker that a child has been beaten or inadequately cared for.[23] The complaint usually is investigated by a social welfare agency, which may either file a charge of child neglect in a juvenile court, work out an arrangement with the parents whereby they "voluntarily" agree to accept agency services or to place their children[24] in foster care, or drop the matter entirely.

LINQUENCY, UNGOVERNABILITY, AND NEGLECT 64–72, 87–88 (1972). The few descriptions of court and agency practices come from studies done in large metropolitan areas. We know virtually nothing about practices in rural, suburban or small city courts.

[19] For example, statutes generally allow intervention when a child is in an "unfit" or "inadequate" home, or where the parents have failed to provide "adequate supervision" or medical care. For a summary of state laws prescribing the basis for intervention, the grounds for removal, and the grounds for termination see Katz, Howe & McGrath, *Child Neglect Laws in America*, 9 FAMILY L.Q. 1 (1975). That article also summarizes the individual state statutes in some detail. *Id.* at 73–362.

[20] For a description of the types of cases that generally arise under neglect statutes, see S. KATZ, *supra* note 18, at 22–27.

[21] *See* A. KADUSHIN, *supra* note 6, at 245–55; S. KATZ, *supra* note 18, at 23–27. It is possible that since many welfare families are subject to social work supervision, complaints concerning their children are more likely to be made than complaints against nonwelfare family children due to the increased exposure to persons who are obligated to report instances of perceived child care deficiencies and who may disapprove of the parents' child care methods, *see* J. HANDLER, THE COERCIVE SOCIAL WORKER 64–68, 136–57 (1973); Rein, Nutt & Weiss, *supra* note 7, at 31; Rosenheim, *Wards of Court: A Perspective on Justice for Children* in CHILDREN AND DECENT PEOPLE, *supra* note 7, at 176.

[22] The fact that more minority group than Caucasian families must rely on welfare perhaps explains why children from minority groups are disproportionately represented in the ranks of neglected children. *See* note 21 *supra*. For a discussion of the problems faced by minority children in the child welfare system, see A. BILLINGSLEY & J. GIOVANNONI, CHILDREN OF THE STORM (1972).

[23] *See* S. KATZ, *supra* note 18. Child abuse statutes may require professional child care persons to make such reports. *See* V. DE FRANCIS, CHILD ABUSE LEGISLATION IN THE 1970's (rev. ed. 1974).

[24] As many as half the children in foster care are there through "voluntary" placements. *See* Gruber, *supra* note 7, at 37; CALIFORNIA HEALTH AND WELFARE AGENCY, CHILDREN IN FOSTER CARE

If the agency petitions[25] the court to find the child neglected, the court may order its own social work staff to conduct an investigation or it may rely entirely on the investigation report of the complaining agency. The child often is removed from her home and placed in an institution or foster home pending adjudication of the neglect charge. Few states place any statutory time limit on how long such temporary custody may last; in some instances it lasts for years.[26]

Neglect hearings generally are conducted informally.[27] Typically, neither the parent, child, nor agency is represented by counsel.[28] In most cases, the allegations are not contested: the parent may be unaware of how to do so. Rather the major focus is on the disposition, that is, what to do for the child.

C. *Removal of Children from Their Homes Following a Neglect Finding*

Upon finding a child neglected, a court has two options available: it can leave the child at home while mandating social work supervision of the family or it can order the child removed from the parents' home. Depending on the resources available in the community, the judge might have a number of options within each of these categories. For example, if the child is left at home, the court can order the parents to allow visits by a public health nurse, to attend therapy sessions, to participate in an alcoholism or drug addiction treatment program, or even to bring the child to a day care center each day.[29] If the child is removed from the home, the court can order placement in a foster home, group home, psychiatric treatment facility, or other institution.[30]

(Report Register No: 340-0395-501, 1974). *See also* note 4 *supra*. I propose standards for regulating voluntary placements in a forthcoming Article. *See also* R. Burt & M. Wald, *supra* note 17.

[25] Juvenile court proceedings generally begin with a "petition" rather than a "complaint."

[26] There are limited data available regarding the extent of pre-trial removal. Several sources indicate that it occurs in as many as half the cases where court action is sought. *See, e.g.*, Burt & Balyeat, *A New System for Improving the Care of Neglected and Abused Children*, 53 Child Welfare 167, 171-72 (1974). Most commentators believe that temporary removal is overused and generally harmful to the child. *See id.* at 168; Campbell, *supra* note 4, at 648-49; Levine, *supra* note 4, at 29-30. Such removals often become long-term or permanent. *See* York v. Hadley, 534 P.2d 363 (Okla. 1975); Campbell, *supra* at 648-49; Levine, *supra* at 29-30.

Some states require judicial review prior to or within several days of removal. Such review may be constitutionally mandated. *See* York v. Hadley, *supra*. *See* R. Burt & M. Wald, *supra* note 17, recommending that pretrial removal be authorized only when the child is in imminent danger of suffering serious physical harm. The proposals also mandate judicial review of the removal decision within 24 hours.

[27] *See* Katz, Howe & McGrath, *supra* note 19, at 40-41. Formal rules of evidence are not followed; for example, hearsay is admissible. *See generally* Campbell, *supra* note 4, at 652-55; Comment, *Dependent-Neglect Proceedings: A Case for Procedural Due Process*, 9 Duquesne L. Rev. 651, 654-60 (1971).

[28] *See* Campbell, *supra* note 4, at 652, 657; Note, *Representation in Child Neglect Cases: Are Parents Neglected?*, 4 Colum. J. L. & Soc. Prob. 230 (1968). There is an increasing body of case law granting the parents the right to counsel. *See, e.g.*, Danforth v. State Dep't of Health & Welfare, 303 A.2d 794 (Me. 1973); *In re* B, 30 N.Y.2d 352, 285 N.E.2d 288, 334 N.Y.S.2d 133 (1972).

[29] *See* Katz, Howe & McGrath, *supra* note 19, at 35-37.

[30] *See id.* The use of different types of placements varies greatly by state. For example, in Utah

Few statutes provide specific guidelines for dispositional decisions. Instead, they direct the courts to order the disposition that is in the child's "best interest."[31] While some statutes specify that the court should prefer maintaining the child in her family, these statutes do not indicate what factors a court should consider in deciding whether a child can be left at home.[32]

In most urban areas the court receives a dispositional report from its staff or from the agency that conducted the investigation of the family. This report contains background information about the family and a recommended disposition. It is usually the only source of information for the judge at the dispositional hearing, since witnesses rarely are called and the social worker who prepared the report usually is not present at the hearing. Courts generally follow the agency or staff recommendation.[33]

When a court leaves a child in the home, it usually orders that the parent accept supervision and social welfare services. When a child is removed, the court does not decide the specific placement; instead, the child is committed to the care of a child care agency or welfare department for "appropriate" placement.[34]

Approximately 75 percent of the children removed are placed eventually in foster family homes,[35] though many spend a period of time in a "shelter" or institution while the welfare department finds a home.[36] The children not placed in foster families, usually because they are older or exhibit behavior problems, are placed in group homes, residential treatment centers, or other institutions.

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over 99.7% of all children are placed in foster family homes, while in Nebraska over 50% are in institutions. *See* J. Koshel, Deinstitutionalization—Dependent and Neglected Children 37–38 (1973).

[31] For a summary of the disposition standards prescribed by various state laws see Mnookin, *Child Custody Adjudication: Judicial Functions in the Face of Indeterminancy*, 39 Law & Contemp. Prob. 226, n.92 (1976).

[32] *Id.* at nn.93–95.

[33] There are some data that indicate that courts may not follow these recommendations as readily if the parents are represented by counsel. A study in New York City found that children were removed far less frequently in cases where counsel was present. *See* Note, *supra* note 28, at 241–44. Data from an uncompleted study at Children's Hospital in Los Angeles indicate that the presence of counsel was a critical variable in predicting removal in over 600 abuse and neglect cases heard by the Los Angeles Juvenile Court (unpublished study on file with the author).

[34] In a few states procedures for court review of child care agency placements exist, *see* note 40 *infra* and accompanying text, but in the main the courts never learn anything about the appropriateness of the ultimate placement. *See* Chappell, *Organizing Periodic Review in Foster Care: The South Carolina Story*, 54 Child Welfare 477, 481 (1975). Some agencies even may resist court review following placement. See Division of Family Services v. State, 319 So. 2d 72 (Fla. App. 1975).

[35] *See* U.S. Dep't of Health, Education & Welfare, Children Served by Public Welfare Agencies and Voluntary Child Welfare Agencies and Institutions, table 9 (1973).

[36] While shelters or dependent child institutions are supposed to be temporary settings, children often remain in them for months or even years. Most are ill-equipped to meet a child's needs for such lengthy periods of time. In some the child may even be physically abused or emotionally traumatized. *See* B. Bernstein, D. Snider & W. Meezan, A Preliminary Report: Foster Care Needs and Alternatives to Placement 17 (1975); Gil, *Institutions for Children*, in Children and Decent People, *supra* note 7, at 53, 76–82.

D. *Laws Regarding Return of Children in Care*

Unless parental rights have been terminated, the parents still retain some rights regarding the child's care while she is in placement. For example, parents must consent to the child's marriage and to major medical decisions. In general, parents may visit their children, although visitation rights may be restricted or forbidden by the court or by agency policies.[37]

Most states do not provide statutory standards for determining when a child shall be returned to her parents.[38] Those that do generally provide that foster care shall continue as long as placement is in the child's "best interest."[39] In general, the agency supervising the child determines whether and when to return a child. Only 18 states and the District of Columbia require a periodic court review of the status of children in care.[40] In the remaining states court review occurs only upon the infrequent request of the parent.[41] Even states that require review procedures do not specify the purpose of such reviews. Only two states, New York and South Carolina, provide for regular review with the express purpose of either returning children home or establishing another permanent home for them.[42]

In practice, once a child is placed outside her original home, the link with her parents often is largely severed, since many parents visit infrequently[43] and have no role in supervising the kind of care the child receives.[44] There is no meaningful review of the status of children in care and little effort to return them home. The result is that the majority of children in placement remain in foster care for lengthy periods of time, without ties to their parents and without being provided with a permanent home.

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[37] Some agencies forbid any visitation for a period of time after the child is placed, often one month. Other agencies may limit visitation to once a month or less.

[38] Twenty-four states and the District of Columbia have no apparent statutory standard: Alabama, Arizona, Arkansas, Colorado, Delaware, District of Columbia, Florida, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, Ohio, Oklahoma, Oregon, Rhode Island, Virginia, West Virginia.

[39] This is the standard in fifteen states: Alaska, California, Connecticut, Idaho, Kansas, Louisiana, Nebraska, North Carolina, Tennessee, Texas, Utah, Vermont, Washington, Wisconsin, and Wyoming. For summaries of the text of the statutes see Katz, Howe & McGrath, *supra* note 19, at 73–362.

[40] Alaska, Arizona, California, District of Columbia, Georgia, Hawaii, Idaho, Iowa, Michigan, Minnesota, New Jersey, New Mexico, New York, North Dakota, Pennsylvania, South Carolina, Utah, Vermont, and Wisconsin.

[41] There are no reported statistics indicating the frequency of such requests on a state by state basis. One study found such requests to be unusual. *See* Campbell, *supra* note 4, at 657. The agency may also request review when it wishes to return a child to the parents or to change placements. However, court review may not be required for change of placements by the agency. *See In re* Timothy P.N., 48 Cal. App. 3d 862, 868, 121 Cal. Rptr. 880, 883 (1st Dist. 1975).

[42] N.Y. Soc. Serv. Law § 392 (McKinney Supp. 1974); S.C. Code §§ 71-221–71-227 (Michie Supp. 1975). In New York the foster parents may contest the return of the child if they have had custody for two years. The South Carolina statute sets up "lay" boards, which are to review the status of foster children every six months to determine whether they should be returned home or parental rights terminated. *See* Chappell, *supra* note 34, at 482–83.

[43] One study found that of all the children in foster care in Massachusetts in 1972, only 30% were visited as frequently as every other week; 26% were never visited. *See* A. Gruber, *supra* note 7, at 48; E. Sherman, R. Neuman & A. Shyne, *supra* note 7, at 32 (finding that only 16% of the children were visited biweekly or more, and that 27% had no contact). *See also* E. Weinstein, The Self-Image of the Foster Child 55 (1960); Fanshel, *Parental Visiting of Children in Foster Care: Key to Discharge?*, 49 Soc. Serv. Rev. 493 (1975).

The absence of visitation may not reflect parental disinterest, however. *See* notes 211–12 *infra* and accompanying text. Visitation may even be forbidden by court order or agency policy.

E. *Laws Regarding Termination of Parental Rights*

Every state has some statutory provision allowing termination of parental rights. When parental rights are terminated, the parent loses not only physical custody but also the right to ever regain custody.[45] Depending on the specific state statutory schemes, which vary significantly,[46] the issue of termination can arise in three different types of proceedings: (a) in the dispositional phase of a neglect proceeding, (b) in an adoption proceeding where the issue is whether the natural parent has to consent to the adoption, or (c) in a special hearing at which termination is the only issue. Proceedings under (a) can occur only in conjunction with a finding of neglect, whereas type (b) and (c) proceedings require no prior adjudication of neglect.[47]

1. *Termination following a finding of neglect.*

In twelve states a court may order termination as the disposition following a finding that the child is neglected.[48] Six statutes specify the grounds on which a court may order termination. The most common grounds are abandonment, incompetent care due to mental illness or deficiency, and repeated neglect.[49] The other states provide only that termination may be ordered when it is in the child's "best interest" or if the parent is "unfit."[50] In general, the statutes fail to define any of these terms.

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[44] The agency in charge of the child and the foster parents make virtually all decisions about the child. *See* A. GRUBER, *supra* note 7, at 47; E. SHERMAN, R. NEUMAN & A. SHYNE, *supra* note 7, at 4–5; Campbell, *supra* note 4, at 661–64; McAdams, *The Parent in the Shadows*, 51 CHILD WELFARE 51 (1972).

[45] Some state statutes generate confusion by using the term "termination" to describe both temporary and permanent loss of parental custody. *See* Gordon, *Terminal Placements of Children and Permanent Termination of Parental Rights: The New York Permanent Neglect Statute*, 46 ST. JOHN'S L. REV. 215 (1971); Note, *Legislative and Judicial Recognition of the Distinction Between Custody and Termination Orders in Child Neglect Cases*, 7 J. FAM. L. 66 (1967). For an example of the confusion caused by such statutes see Fritts v. Krugh, 354 Mich. 97, 92 N.W.2d 604 (1958). In this Article "termination" will be used only to describe complete and permanent severance of the parents' rights over the child.

A concise bibliography on termination is found in Levine, *Foundations for Drafting a Model Statute to Terminate Parental Rights: A Selected Bibliography*, 26 JUVENILE JUSTICE, Aug. 1975, at 42–56.

[46] For a summary of these laws see Katz, Howe & McGrath, *supra* note 19, at 47–49. *See also* Areen, *Intervention Between Parent and Child: A Reappraisal of the State's Role in Child Neglect and Abuse Cases*, 63 GEO. L. REV. 887, 928–30 (1975).

[47] The question of termination can arise in two situations other than when a child is under state supervised foster care. First, termination may be ordered to permit a stepparent adoption, when the non-custodial natural parent refuses to consent to a stepparent adoption. Second, a party wishing to adopt a child who has been placed in their care, either by the natural parents or by an adoption agency, may request termination if the natural parent refuses to consent to the adoption. The issues involved in these situations are quite different from those involved when a child is in foster care because of neglect. For example, in stepparent adoption cases, failure to terminate does not deprive the child of a permanent home, since she will continue to live with the custodial parent.

Despite the differences, legislatures have often failed to treat the issues differently. The proposals in this Article provide for different standards in cases involving children in court-ordered foster care. In place of the current statutory schemes, termination is authorized only at the original dispositional hearing or at a subsequent review hearing on the child's status if she is in foster care. *See* notes 266–67 *infra* and accompanying text.

The little available evidence indicates that termination following an initial finding of neglect is rare in most states.[51] Most courts seem to prefer to give the parents an opportunity to rehabilitate themselves. Thus, for most neglected children the question of termination arises, if at all, only after they have been in placement for a period of time. When the child is in placement, termination may be requested by the placement agency or, in a few states, by foster parents who wish to adopt the child.[52]

2. *Termination at adoption proceedings.*

In general, the consent of both natural parents is necessary before a child can be adopted. However, all states have laws permitting adoption without parental consent under some circumstances. In 30 states the need for parental consent can be waived by the court at the adoption hearing itself.[53] In the remaining states parental rights must be terminated at a special proceeding prior to the adoption hearing.

The most common ground for dispensing with parental consent to adoption is "abandonment." In general, the statutes define abandonment in terms of parental failure to provide economic support for, or to visit, a child in placement.[54] While some courts have interpreted these statutes broadly to allow termination when it is in the child's "best interest,"[55] other courts have construed the statutes quite strictly by demanding proof that the parents' non-support or the failure to visit was willful or by allowing minimal visitation to suffice.[56] A court also may require a showing that the parent has demonstrated "a settled purpose to forego all parental duties, and relinquish all parental claims to the child."[57]

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[48] *See* Areen, *supra* note 46, at 929 n.212. In addition to those states listed by Areen, New York also appears to allow termination at this point. *See In re* C, 63 Misc.2d 1019, 314 N.Y.S.2d 255 (Fam. Ct. 1970).

[49] *See, e.g.*, FLA. STAT. ANN. § 39.11 (West Supp. 1975); Simpson, *The Unfit Parent: Conditions Under Which a Child May Be Adopted Without the Consent of His Parent*, 39 U. DET. L.J. 347, 360–69 (1962).

[50] *See, e.g.*, KAN. STAT. ANN. § 38-824(c) (1973).

[51] *See, e.g.*, M. BURT & L. BLAIR, *supra* note 4, at 33.

[52] *See* N.Y. SOC. SERV. LAW § 392 (McKinney Supp. 1975). However, in most states foster parents have no standing in any cases involving custody of the child and may be discouraged or prohibited from adopting children in their care. This practice has been criticized by a number of commentators. *See* S. KATZ, *supra* note 18, at 90–106; Note, *The Foster Parents Dilemma: "Who Can I Turn to When Somebody Needs Me?"*, 11 SAN DIEGO L. REV. 376 (1974). *See also* Stapleton v. Dauphin County Child Care Service, 228 Pa. Super. 371, 324 A.2d 562 (1974).

[53] *See* Areen, *supra* note 46, at 928 n.211.

[54] *See, e.g.*, DEL. CODE ANN. tit. 13, § 1101 (1975 Supp.). Statutes specify other less precise grounds for termination also: parental unfitness, repeated neglect, incapacity due to mental illness, imprisonment and "unreasonable withholding of consent." *See* Katz, Howe & McGrath, *supra* note 19, at 47–49. Since there are few appellate cases, it is difficult to predict the results that will be reached under these standards. It should be noted that the problem of a paucity of appellate cases runs throughout the termination area. Since the issue of termination is a factual question, few appeals are taken. For example, in Michigan in 1974, appeals were taken in only 14 of 774 termination cases. *See* Stipulation of Parties in Reist v. Dondas, No. 56919 (Mich. Sup. Ct., June 18, 1975).

Recently a few states have passed laws dispensing with the parental consent requirement at an adoption proceeding if a child has been placed in the custody of a welfare department by court order and the parent has failed to contribute to the support of the child or to maintain contact with the child.[58] These provisions are designed to facilitate adoption of children in long-term foster care.

Such statutes still may not lead to many terminations.[59] As a matter of policy, child care agencies are reluctant to place children in adoptive homes unless the child is free for adoption.[60] Since these statutes allow termination only at adoption proceedings, and an adoption proceeding cannot be held without prospective adoptive parents, agency practices preclude use of this type of law. Therefore, unless a state has a law permitting termination in a proceeding separate from, and prior to, an adoption proceeding, children under agency supervision are unlikely to be adopted.

3. *Laws creating special termination hearings.*

At least 21 states provide for special termination proceedings.[61] The statutory grounds for termination generally parallel those applicable at adoption hearings. While a few courts have interpreted these laws to permit terminations that would not be authorized under adoption statutes, most courts have applied the case law developed under adoption without consent statutes in interpreting these newer laws.[62]

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[55] *See, e.g.*, State *ex rel.* Juvenile Dep't of Marion County v. Draper, 7 Ore. App. 497, 491 P.2d 215 (1971).

[56] *See* H.G.R. v. Smith, 483 S.W.2d 779 (Mo. Ct. App. 1972); *In re* Taylor, 419 S.W.2d 473 (Mo. Ct. App. 1967). *See also In re* Adoption of Male Child, 539 P.2d 467 (Haw. 1975).

[57] Winans v. Luppie, 47 N.J.Eq. 302, 305, 20 A. 969, 970 (1890). *See also* Adoption of V.M.C., 528 P.2d 788, 792 (Alas. 1974), "a conscious disregard of the obligations owed by a parent to a child" necessary for abandonment to be found.

[58] *See* S.C. Code §§ 31-60–31-65 (Michie Supp. 1975).

[59] *See* Chappell, *supra* note 34, at 480 (only 24 cases were decided in South Carolina in an 18-month period while 346 children in long-term foster care were eligible for adoption). *See also* Gordon, *supra* note 45, at 230.

Most states do not provide statistics regarding terminations. However, my discussions with judges and child workers from a number of states indicate that the South Carolina situation is typical. It does appear that in at least a few states termination is fairly common with as many as 500–1000 a year. *See* Stipulation of Parties in Reist v. Dondas, No. 56919 (Mich. Sup. Ct., June 18, 1975). Many of these may involve stepparent adoptions, however.

[60] *See* Gordon, *supra* note 45, at 299–30; Pennypacker, *Reaching Decisions to Initiate Court Action to Free Children in Care for Adoption*, 40 Child Welfare, Dec. 1961, at 11. *But see* Gill, *The Foster Care/Adoptive Family: Adoption for Children Not Legally Free*, 54 Child Welfare 712 (1975).

[61] *See* Areen, *supra* note 46, at 929 n.213. Since the statutes are often vague or poorly drafted, it is unclear whether such proceedings are available in a few additional states.

A few statutes do contain provisions that make termination easier if the child has been in long-term foster care.[63] These statutes attempt to focus on the likelihood of family reunion rather than on whether the parent intended to abandon the child. They allow termination if a child has been in placement for a period of time, usually from six months to two years, and the parent "has failed substantially and continuously or repeatedly to maintain contact with and plan for the future of the child,"[64] regardless of whether the parent intended to resume custody. Termination may be conditioned, however, on proof that the parent's failure to maintain contact was willful and that the agency supervising the child attempted to facilitate contact.[65]

Historically it appears that termination has been utilized infrequently. However, at least some welfare agencies now intend to try obtaining termination more often.[66] While there is some evidence of increased terminations, such laws still are applied in a very small percentage of the cases where children are in state care.[67]

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[62] *See* notes 53–60 *supra* and accompanying text.

[63] *See, e.g.*, CAL. CIV. CODE § 232(a)(7) (West Supp. 1975); N.Y. FAM. CT. ACT § 611 (McKinney 1975). These laws frequently were passed as a result of pressure from child welfare groups, concerned over long-term foster care for neglected children. However, the laws generally are applicable to children in care for reasons other than court commitment. Only three states limit their application to children under state supervision.

[64] N.Y. FAM. CT. ACT § 614(d) (McKinney 1975).

[65] *See* Gordon, *supra* note 45, at 233 (citing cases under various statutes). In a few states termination is permitted when the parent has a repeated history of neglecting the child or of failing to give "proper care." For a list of these statutes see Katz, Howe & McGrath, *supra* note 19, at 47–49. These states also permit termination on a showing that the child has been in care and the parents have failed to improve their conduct, thus preventing the return of the child, even if the parent maintained contact or support.

Proving willfulness or sufficient agency effort may be very difficult. *See, e.g.*, *In re* Clear 58 Misc. 2d 699, 296 N.Y.S.2d 184 (Fam. Ct. 1969), *rev'd sub nom. In re* Klug, 32 App. Div. 2d 915, 302 N.Y.S.2d 418 (1st Dept. 1969).

[66] This prognosis is based on the author's conversations with welfare officials from several states.

[67] *See* M. BURT & L. BLAIR, *supra* note 4, at 80–83; Chappell, *supra* note 34; Fanshel, *supra* note 8.

IF YOU CARE ABOUT CHILDREN, THEN CARE ABOUT FAMILIES

by Arthur C. Emlen
Permanent Planning Project

The field of child welfare copes with one of society's most perplexing dilemmas. The family is society's primary child welfare institution, yet for a few families in which parental behavior creates hazards for children that demand a protective response, imbalances occur between our concern for children and our concern for parents. Our responsibility to protect children is inescapable, but unfortunately those child protective sentiments have been expressed primarily through child-serving and child-saving institutional structures in a society lacking resources or policies to lend strength to the family. In our eagerness to serve, teach, or protect children, we are sometimes led to ignore the parents, to be insensitive to their concerns, to compete with them, criticize, be frustrated, to be more expert and compensate for their inadequacies.

For example, an exotic dancer is arrested, and the child, who goes with her to the nightclub, is placed in foster care. The police can't hold the dancer, but the child stays in care. Two years later we find in a case review that there is no basis for keeping the child in foster care or for termination of parental rights; in fact, the child could be and is returned home. Foster care had not been necessary. Instead, what the mother had needed was help in making a suitable child care arrangement -- a responsive day care service. A less extreme remedy than foster care probably would have sufficed. It might have failed to suffice, to be sure, but it was not tried; the defect was in procedure. Less extreme, known alternatives to foster care were not attempted, so there is no way of knowing whether foster care placement was a necessary level of response to the child's vulnerable situation.

The absence of adequate and timely services to the family creates what I like to call a lack of "due process of service." A child and his family should be spared the extreme remedy of separation until more preventive remedies have been tried. Due process of service is a procedural safeguard which assures that a child's needs will be addressed by a sufficient but parsimonious response. Such a graduated response first supplements the capabilities of families with a minimum escalation in official responsibilities and a minimum loss of self-sufficiency and personal freedom.

Foster care is a service whose purpose and function are under intensive study today. In every state across the country the magnitude of inappropriate foster care placements and drift is substantial. For some children it isn't enough. Under planned conditions, foster care is an appropriate service for many children, but can we say for which children it is the appropriate course to take?

When concern for children is coupled with inadequate technology for supporting parental capability, or an absence of resources or policies that strengthen the family, then we have created pressure to make unnecessary use of substitute forms of care and treatment. We overkill. I believe it may be stated as a general principle that whenever there are gaps in the range of resources available to match a need for help, for control, or for care, there will be pressure unnecessarily to use those resources that provide total care, treatment, and control. If treatment services are packaged only with placement resources, then placements will be used as the only available way of obtaining help for the child and his family.

"Due process of service" also means doing enough. In situations of extreme and probably long lasting parental inadequacy, the solution may not be foster care but termination of parental rights and adoption by parents who can be permanent. While termination of parental rights is a "radical" legal remedy, in another sense it is a less radical concept than foster care; a permanent legal family is more likely to offer security and protection than foster care if planning drifts, temporary becomes prolonged, relationships alternate, and the future blurs.

The concept of permanency calls us to a due process that requires adequate preventive approaches as well as sufficient legal solutions.

TERMINATION OF PARENTAL RIGHTS IN YOUR JUVENILE COURT, SUGGESTIONS FOR FURTHER STUDY

The following study ideas are designed to help you investigate and assess your juvenile court in its handling of termination of parental rights cases. Guest speakers familiar with the court, such as judges or court counselors, would be valuable resources for supplementing the written material in this module. You may also want to refer to the article and charts in Module 1.1, as well as the suggestions for further reading there and in this module.

1. Look at the chart on page 2.1.11, Erosion of Parental Rights. Does your court use all the different kinds of legal statuses for dependent children listed on the chart? Are there others in use? Do children, once placed in one of the seven legal situations listed, tend to remain where they are, or is there quite a lot of movement from one column to another? Does termination of parental rights occur in your area only as a prelude to adoption, or does your court order termination of parental rights for unadoptable children as well?

2. Look at the chart on page 2.1.5, Sequence of Hearings Leading to Termination of Parental Rights. Construct a flow chart of your juvenile court proceedings from entry of a family into the system to termination of parental rights. Include all hearings and briefly describe what happens at each. Describe the duties and role of the caseworker at each hearing. List the possible outcomes for the family and child of each kind of hearing.

3. Michael Wald states (p. 627):

> "It is widely acknowledged that the present system of intervention, rather than working as envisioned, unnecessarily harms both parents and children.[13] On the one hand, parents who want their children are deprived of them without being offered services that might eliminate the need for removal and spare both the child and parents the trauma of separation. Nor are they provided with resources to enable them to resume custody following removal. On the other hand, children who are unwanted by their parents, or whose parents cannot manage to resume custody, are denied permanent homes."

   Does this statement accurately describe the situation in your area? Read through section I, Description of the Existing System, of Mr. Wald's article, and identify the problems he discusses that might account for the situation described above. Relate the inadequacies he describes of the juvenile court system in this country to your own, local juvenile court. Does it have some of the same problems?

4. Mr. Wald states further (p. 628):

   > ". . . Fundamental rethinking of the assumptions of the entire intervention system is necessary. New laws and administrative procedures must be devised that reflect and facilitate a set of consistent goals for the entire process of state intervention on behalf of neglected children."

   The major portion of his article, not reprinted here, goes on to discuss in detail inadequacies of the current system of removing children from their homes and to propose new standards for state intervention. Based on your reading of the article or others listed in Further Reading, as well as on your own experience, what changes do you believe would improve your juvenile court's services for dependent children? Specifically, what changes would you make to ensure that termination of parental rights is ordered as often as, but no more than, necessary?

5. Consider termination of parental rights as one action in a spectrum of actions that society might take in response to a child's vulnerable situation, as suggested by the "due process of service" concept in Mr. Emlen's article. What actions by the state do you think should always precede the drastic and irreversible step of termination of parental rights? Considering your own values, in what situation, if ever, is termination of parental rights justified?

TEACHING RESOURCES:

In this module:

- Article: "Analyzing State Statutes," by John Volkman, J.D. and Susan Downs
- Exercise: Analyzing Termination of Parental Rights Statutes
- Article: "Proposed Termination of Parental Rights Statute," by Victor Pike
- Article: Excerpts from "Legislative Change Strategies," by David B. Frohnmayer, J.D.

Other resources:

- Your own state statute relating to termination of parental rights
- Guest speakers: lawyer or judge with expertise and experience working with the provisions of the statutes you are analyzing; citizen advocate for children's rights; state legislator.

GENERAL LEARNING OBJECTIVES

The materials in this module are designed to help prepare students to:

- understand how state statutes relate to case law, and how both affect child welfare practice;
- identify in the state statute relating to termination of parental rights the specific grounds on which termination of parental rights may be granted, and any burden of proof or other requirement for establishing these grounds;
- apply provisions of a statute to a specific case;
- evaluate the adequacy of a statute and identify any weak points;
- understand the process whereby statutes get written and amended by state legislatures.

TEACHING STRATEGIES:

The article, "Analyzing State Statutes," introduces in a general way the provisions that a termination of parental rights statute should contain, and how the statute should help shape agency policy in permanency planning. The material is introductory and students should either have read the article or listened to a lecture from it before undertaking further work in the module. The article can provide the basis for a classroom exercise in which students are asked to think of other qualities a statute should have and the kind of provisions it might contain. A list of such qualities can be kept and used later when the class evaluates an actual statute.

The exercise "Analyzing Termination of Parental Rights Statutes" gives students the opportunity to examine a specific statute. We strongly urge you to provide students with their own state statute. The questions in the exercise can be answered by a small group through discussion, or each student can answer the questions and then the group as a whole can compare responses through discussion. As the exercise suggests, students can move from considering the actual provisions of the statute to applying the provisions to a specific case, either the Hoover case or others that they have brought with them. A lawyer or other guest speaker who understands and has worked with the state statute will be an invaluable contributor to discussions of the state's statute and how it operates in practice.

Vic Pike's model statute can substitute for an actual state statute if the latter cannot be obtained, but the class will lose the immediate relevancy that the use of the state's own statute would provide. A further use of the model statute is as a basis for comparison with the state's own statute. Discussion in class could center on differences in the provisions of the two statutes, and which more nearly meets criteria for a good statute. The complete draft of the model statute, with commentary on each of its provisions, is available from the Permanent Planning Project. It and the other model statutes listed below would be good resource materials for a more extensive class project, that of drafting a model statute of their own.

The excerpt from the article "Legislative Change Strategies" shows vividly the rough and ready way in which legislatures make the laws which are codified in the state statutes, and also gives practical suggestions on advocating for statutory change in the legislature. The class might want to map out a plan for lobbying for legislative change. Someone in the community who is known for advocacy of children's rights, such as the head of the foster parents' association, would add interest to such a discussion. A state legislator would also be a good resource for class discussion and could, perhaps, discuss the "rules of legislative advocacy" in relation to the state's own legislative procedures and organization.

FURTHER READING:

Model Statutes: Judge J. Lincoln, "Model Statute for Termination of Parental Rights," *Juvenile Justice*, November, 1976.

"Model Act to Free Children for Permanent Placement, with Commentary," Children's Bureau, 1977.

Victor Pike, "Proposed Termination of Parental Rights Statute with Commentary, Permanent Planning Project, Regional Research Institute for Human Services, Portland State University, 1977.

Michael Wald, "State Intervention on Behalf of Neglected Children: Standards for Removal of Children from their Homes, Monitoring the Status of Children in Foster Care, and Termination of Parental Rights," *Stanford Law Review*, Vol. 28, 1976.

David Frohnmayer, "Legislative Change Strategies," Permanent Planning Project, Regional Research Institute for Human Services, Portland State University, 1977.

ANALYZING STATE STATUTES

by John Volkman and Susan Downs

Introduction: Statutes and Case Law

Child welfare practice which involves permanent change in the custody of children is guided not only by concepts of good casework methods, but also by the law. Caseworkers in child welfare need to know the laws in their state that govern adoption and termination of parental rights, if their casework planning decisions are to conform to the law.

Each state has its own laws in the area of child custody, which come in two forms: statutes and case law. Statutes are written and enacted by state legislatures. They are supposed to express the views of the majority at the time they are written, and they give the rules to which everyone, including judges, must conform.

Case law consists of the written opinions of judges which justify their decisions. The decisions apply statutes and previous case law to a particular instance. Case law exists because statutes cannot be absolutely clear, nor can they provide for all possible situations. If a statute were that specific, it would be too long and complex to be manageable.

Case law usually refers to the written decisions of appellate courts. Lower court decisions in cases where one of the parties strongly disagrees with the outcome may be appealed to an appellate court, where the statute's application in the particular case may be settled. Appellate decisions interpreting statutes are handed down continually, and each one can be used as precedent for future cases. So the law is always evolving; the decision in any one case is based on the statute, the body of case law interpreting the statute, and the application of its provisions to the case at hand.

Statutes and case law must be read and understood together. In analyzing a statute, never assume that you understand what it means merely by reading and analyzing it. What looks like plain English may actually be a legal term whose meaning is explained by the case law.

Use of State Statutes

The state statute dealing with the termination of parental rights should assist those who use it. The opinions of those users - social workers and agency administrators, as well as lawyers and judges - are important in shaping or refining the statute. A good statute should serve as a decision-making tool, guiding the worker who must decide when to try to reunite a family, and when to ask the court to terminate parental rights in order to proceed with adoption. A termination statute should help social workers communicate with judges and lawyers by providing them with a common set of guidelines. Judges look to termination statutes for guidance in deciding how to decide a termination case in court. And the same statute should tell caseworkers what kinds of cases may be covered by the termination statute, and how to structure casework. Casework activities and records must be consistent with the statute, and the statute should clearly spell out what workers must do to prepare a case for termination.

From the time a case is received, casework and its documentation should be structured with the termination statute in mind, even if the initial goal of the caseworker is to reunite the child with the biological parents. If efforts to reunite the family fail, the worker must be able to turn to the termination statute in order to free the child for a permanent placement. To have failed to consider the requirements of the statutes until this point is like building a boat without first measuring the dimensions of the door through which the boat must fit.

Evaluating a Statute

Many social service agencies in many states are concerned about the adequacy of their termination statutes. Such agencies ought to ask of every statute how well the statute will meet the needs of social workers. Will this statute help them to make hard decisions? To communicate effectively with judges and lawyers? To do the kind of casework they must do?

The following checklist contains provisions for termination of parental rights statutes that some states have found helpful in guiding casework practice. The list is intended to be neither prescriptive nor exhaustive, but rather to provide a basis for beginning analysis of a termination of parental rights statute.

- Clarity — This is one characteristic which a statute absolutely must have. The language must be clear and understandable.

- Specificity — The statute should be specific, so that its provisions can be applied to a given case. On the other hand, a statute can contain too much detail, and lock things into procedures or time limits which are clearly burdensome or superfluous.

- Grounds — Does the statute cover all the cases that should be brought? This will normally be covered in the "grounds" section of the statute. Is parental absence a ground for termination? If so, how is the required length of absence determined? Are incapacitating parental conditions grounds for termination? What kinds of conditions? Is conduct which is seriously detrimental to the child a ground for termination? If so, how detrimental must the conduct be?

Right to Counsel	Does the statute provide free counsel for indigent parents and children separately? This is a policy decision for the legislature, but, if not settled by the statute, may make the caseworker's job harder and may generate appeals.
Psychiatric Examinations	Does the statute authorize the courts to order parties to submit to psychiatric examinations where relevant to the termination proceeding? This again is a difficult policy question which also raises constitutional issues. However, in a case involving parents whose condition is detrimental to the child, a psychiatrist's diagnosis may be a key to the case.
Agency Services	Does it require the agency to provide services to families as a precondition to termination? Such a requirement, if not unreasonable, can encourage permanency planning.

Remedying a Bad Statute

If your statute is vague or unclear a court may be uncertain whether to terminate because the statute fails to provide clear standards. Competent, carefully documented casework, combined with expert legal advice can help remedy this. If the agency has done what it can and has carefully documented its actions, and if the situation of the family is hopeless in the opinion of experts in the community, you have at least provided the judge with what he needs in order to make a decision. Furthermore, a well-documented case presents a clearer record on appeal. Through this kind of work, the agency can build a relationship of trust with a judge.

If your casework is good but there is simply an irreconcilable split of opinion about what the legislature meant to happen in a given case, bring an appeal. (See Module 2.1, The Juvenile Court: Termination of Parental Rights, p. 2.1. , for a discussion of the appellate process.) Select the right cases to appeal. Appeal those cases where the casework was clearly documented, and the particular question of statutory application is raised most clearly. Cases where the issues are clouded with poorly documented casework or minor procedural issues may go off in directions that won't clarify the statute. Sometimes, if the trial judge also wishes guidance on such a question, the judge will help to place a good case in the right posture for appeal.

If the statute is beyond the help afforded by good casework and appeals, you must go to the legislature. This requires a great deal of effort, and involves considerations which are beyond the scope of this article. However, two basic matters will be important in any attempt to pass legislation. First, the problem with the current statute must be clearly demonstrated in a clear and convincing way. Second, you must be prepared to present a new proposal supported by a reasoned justification, which solves the problem you are concerned with and is fair to all concerned. The fairness of the proposal and the credibility of your justification will have a direct effect on your ability to attract co-sponsors and other supporters for your proposal.

EXERCISE: ANALYZING TERMINATION OF PARENTAL RIGHTS STATUTES

"Termination of parental rights is one of the most drastic actions the state can take against its inhabitants," (State v. Jamison, 241 Or. 114, 117 444 P2d 1005 (1968)), and under the "parens patriae" principle, the State is charged with the responsibility to safeguard the welfare of all its constituents, including parents and children.

Because a termination of parental rights is a very serious legal action, only a court of law should decide the issue, and full due process of law should be accorded all parties involved in the proceedings. A proper termination of parental rights statute should not only protect children from years of uncertainty and transiency, it should protect parents from any capricious action that might unfairly deprive them of their biological children.

The following exercise is provided to help you read your termination of parental rights statute, understand what it says, and relate its provisions to child welfare practice.

Consider the following questions in relation to the statute you are reviewing:

1. Location of Statute: Information on termination of parental rights may be located in more than one place in the state's statutes. It may be found in statutes dealing with dependency and adoption, for example, as well as in a statute on termination of parental rights. Write the statute number and title, and section or chapter title, of the statutes that deal with termination of parental rights in your state.

2. Grounds for Termination of Parental Rights: Statutes should list the grounds on which termination of parental rights may be granted by the court, although not all statutes do so. The grounds should include specific parental behavior that justifies termination of parental rights. List the grounds your statute gives that justify termination, and answer these additional questions about each: Is a time limit mentioned?

Is any specific kind of evidence mentioned as necessary to provide the ground? Does the ground seem fair and reasonable? (Do you think parental rights should be terminated for this reason?)

Grounds	Time Limit	Evidence	Fair?

3. Can you think of any grounds that should be listed but aren't? (There should be grounds covering parental absence, irremediable illness and conditions, and parental conduct.)

4. Burden of Proof: Does the statute require the agency to provide rehabilitation and other social services to parents? Does the statute give a standard of proof that the petitioner must meet in order to "prove" the allegations of the petition? (e.g., preponderance of evidence, clear and convincing evidence, beyond a reasonable doubt). What is it?

5. Optional Questions for Discussion: Under the state statute you have been considering, could the rights of Mrs. Hoover have been terminated? The rights of Mr. Hoover? (See Module 2.0, The Hoover Family: Termination of Parental Rights Case, p. 2.0.1). Could their rights have been terminated under the model statute by Vic Pike?

PROPOSED TERMINATION OF PARENTAL RIGHTS STATUTE*

by Victor A. Pike, MSW
Permanent Planning Project

I.

A. The parental rights of the parent of a child within the jurisdiction of the court may be terminated, as provided in this section.

B. The rights of one parent may be terminated without affecting the rights of the other parent.

C. The purpose of terminating parental rights shall usually be to free a child for adoption, and the provisions of this statute shall be liberally construed to that end when it is unlikely, in the foreseeable future, that a parent can or will provide a home for the child that is not seriously detrimental to the child.

D. The standard of proof in termination of parental rights proceedings shall be preponderance of the competent evidence.

E. Any parent whose parental rights are proposed to be terminated by a petition filed in court, shall be represented by an attorney and the county shall appoint the attorney, at court expense, if the parent is financially unable.

F. Any child whose parents' rights are proposed to be terminated by petition filed in court, shall be represented by an attorney, and the court shall appoint an attorney, at court expense, if the child is financially unable.

G. A presumptive father of a child shall not have rights to a child when the court determines that he is not the biological father of the child.

II.

A. The rights of the parent may be terminated if the court finds that the parent has abandoned the child. It will be presumed that the parent has abandoned the child if:

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*For discussion purposes only.

1. the child was left under circumstances that made reasonable the belief that the parent did not intend to resume care of the child in the future and the whereabouts of the parent could not be ascertained, despite diligent searching, within six months following the finding of the child, or;

2. the child was left under circumstances in which the identity of the parent could not be ascertained, despite diligent searching, within six months following the finding of the child.

III.

A. The rights of the parent may be terminated if the court finds that the parent has deserted the child and has failed, without reasonable and lawful cause, to provide for the basic physical and psychological needs of the child for one year prior to filing of the petition, which shall be evidence that integration of the child into the home of the parent is not likely in the foreseeable future. In making this determination, the court shall consider, but is not limited to, one or more of the following:

   1. failure to provide care or pay, if financially able, a reasonable portion of physical care and maintenance, if custody is lodged with others. Failure to pay, in itself, will not be grounds to terminate parental rights.

   2. When custody is lodged with others, failure to maintain regular visitation or other contact with the child which was designed and implemented in a plan to reunite the child with the parent.

   3. Failure to contact or communicate with the custodian of the child.

B. In making the above determination, the court shall disregard incidental contributions, contacts, or communications.

C. If the parent's whereabouts is unknown, a diligent search shall be made for the parent prior to the filing of the petition.

IV.

A. The rights of the parent may be terminated if the court finds that the parent has a condition that is seriously detrimental to the child and integration of the child into the home of the parent is impossible in the foreseeable future. In making this determination, the court shall consider, but is not limited to, one or more of the following conditions:

   1. mental illness;

   2. emotional illness;

3. mental deficiency;

4. narcotic or dangerous drug addiction;

5. alcohol addiction.

B. If there is information and belief that a condition exists which is seriously detrimental to the child, the court may order an evaluation by a physician, psychiatrist, or psychologist, and the court may use the findings of that evaluation in determining if a condition does exist.

V.

A. The rights of the parent may be terminated if the court finds that the parent's conduct is seriously detrimental to the child and integration of the child into the home of the parent is impossible in the foreseeable future. In making this determination, the court shall consider, but is not limited to, one or more of the following conducts:

1. physical neglect of the child;

2. treatment toward any child of an abusive, cruel, or sexual nature;

3. failure of the parent, despite help from available social agencies, to make a lasting adjustment of those circumstances which prevented an integration of the child into the home of the parent.

B. In cases alleging conduct under Section (V) of this statute, it will be assumed that available social agencies have worked with the parent to correct the conduct that is seriously detrimental to the child; however, failure of those agencies to work with the parent shall not be grounds to deny a termination of parental rights petition, when it is in the best interests of the child to be placed for adoption.

Excerpts from LEGISLATIVE CHANGE STRATEGIES

Paper presented to the Second National
Permanent Planning Conference
Keystone, Colorado, October, 1977

by David Frohnmayer, J.D.
Representative, Oregon State Legislature

It is safe to assume that most of the nation's 7200 state legislators understand little about social work or psychology (apart from their intuitive understanding about the principles of electoral psychology). But even so, they are responsible for making decisions affecting the practice and funding of social programs. This gap between knowledge and power sparked a frustrated judge to write in 1866 that, "No man's life, liberty or property are safe while the legislature is in session." A similar uneasiness is reflected in the bumper sticker I once saw bearing the inscription: "Hide your silverware, the legislature is back in session."

However, the legislature is often an important form for achieving some of the goals of permanent planning. Even the best organized permanent planning project with the most skilled caseworkers can come to utter frustration if the statutory structure of the state does not permit recourse to new developments and techniques. It is vital, therefore, to examine your opportunities for statutory reform, and to understand the strategies involved in legislative advocacy.

The typical state legislature (excluding California and New York which follow the congressional model) is part-time, and composed of citizens who live and work most of the time in their own local communities. The legislature is commonly thinly staffed, does not meet continuously, and has a high turnover (sometimes as high as 50 percent of the membership changes from session to session). The legislators depend on people coming to them from the executive branch, from the various lobbies, and from state agencies to initiate policy. A small number of dedicated people can have an enormous impact on the average citizen legislature in the state if they know what they are doing, what they want, and follow the appropriate techniques of persuasion.

You can assume that most legislators will show an abysmal lack of knowledge about the problems of foster care. Legislators may have heard isolated constituent complaints about placement decisions, or comments such as, "Gee, it costs a lot of money to support the foster care budget." But it is most unlikely that many possess a systematic view of the juvenile court system, let alone the entire child care system. And, to round out the picture, there is an enormous premium on time in the state legislature. Sessions are part-time, and pressures are intense. The lack of information is a tremendous handicap to most legislators, and this is particularly true during the closing crunch of the session when most bills reach the point of final debate and passage.

As an advocate for legislative change, then, you must be prepared to educate the legislators. You must know well in advance of the legislative session what information you need. Assemble data about what foster care limbo really means. It is a graphic, human and tragic story, and it is very effective as a piece of advocacy. Do a census in your state if it has not been done before. Identify the percentage of children who are in long-term foster care. Identify the percentage that are likely to be returned home on an annual or long range basis. Identify the number or percentage of children whose parents' rights are can be terminated and who are therefore available for adoption. Identify those who are in permanent limbo, who are going nowhere. Identify the budget numbers on foster care costs. These facts are fairly basic tools of advocacy, but social services agencies often fail to generate and present them effectively.

Providing factual information to the legislators is only half the battle. You must also deal with political and emotional opposition to permanent planning. I favor permanent planning, but came to recognize slowly that the issue is not a very popular one. The legislature tends to reflect traditional values and one of those values is the sanctity of the family and the integrity of blood ties. You will find a built-in concern, reflected in political attitudes, about government intrusions into families. Legislators may not like what you have to do in permanent planning. The confrontive technique which is necessary to force a family to function with minimal adequacy may involve children and families in a high degree of stress for a short period of time. It may strike people who do not understand these psychological dynamics as being a very cruel thing for a social agency to do. Under the wrong circumstances, that can create legislative resistance.

Bear in mind, also, that some legislators got to the legislature by running against the government: the Carter/Reagan syndrome. That current is running strongly right now. To the extent that your very process involves intensive intervention into the family by a government agency, you can expect to experience political fallout.

As if that all isn't enough, it's safe to say that social workers have a very uneven reputation with legislatures (which is reciprocated, of course, by the legislature's very uneven reputation in social agencies). Your errors tend to be magnified, and you're not always seen as sufficiently hardheaded. My wife has never forgiven the attorney who accused her on cross-examination of being a "bleeding heart social worker." He was clearly trying to ride on a common perception of social workers. Some social work concepts -- particularly some of the more paternalistic --

have in retrospect proved to be wrong. You may find judges, educators, and legislators leading the charge against social agencies for past sins. Finally, legislators have often heard only one side of the story. Parents who have lost in court, grandparents who feel that termination threatens continuation of the family line, or foster parents who feel excluded from the process -- all of these people vote, all of these people can write damaging letters to the editor about legislators on the firing line, and all of them can bring to bear very human perspectives of great pathos and drama. Legislators may be justifiably reluctant to run afoul of attitudes so intensively symbolic and important to the family unit.

It is important that you anticipate these political constraints and are prepared to deal with them. The following rules of legislative advocacy may prove useful. Like most good guidelines, they are based on common sense.

1. Maintain Personal and Program Credibility. The first essential, whether for a state agency head or any person involved with securing legislative changes is to maintain personal contact with key legislators, and at all costs, maintain personal credibility. Too many people appearing before state legislatures are shrinking violets. Agency personnel in particular often seem to adopt a contrite attitude in order to keep budgets intact.

To a legislator, however, an agency person is a resource. Agency representatives and citizen advocates often could do far more good and would be far more appreciated if they were fully candid. I infinitely prefer the blunt advocate who pulls me aside and says, "Representative Frohnmayer, your proposed amendment is the stupidest thing I've every heard and here's why. . ." and then gives me facts and reasons. Surprisingly, perhaps, legislators respond positively to facts and reasoned arguments. Legislators, understandably, also appreciate early warning of political troubles which their tentatively initiated ideas might generate.

2. Be Persistent. It's hard to get things started. Because of the absence of full-time professional expertise, legislators seldom initiate policy and depend to an extraordinary degree on people coming to them with comments and concerns. When measures do get started, legislators wait for people to complain or raise the red flags of objection. Silence by advocates and lobbyists tends to be taken as aquiesence. When no opposition is forthcoming, an idea takes on legitimacy and becomes increasingly hard to stop. The converse is also true.

What this pheonomenon means is that persistent advocates are more likely than not to be successful. Incremental strategies are particularly useful. You get your foot in the door one session; you come back the next session and get a little more; and by the third session the idea is orthodoxy.

3. Fill the Information Gap. The key point to remember is that legislators need information, and they pride themselves on making decisions on "the

facts." Consequently, an appeal to reason must never be ignored. Tell legislators about the psychological damage caused by long-term foster care; provide the text of a proposed law that has demonstrated success and effectiveness elsewhere. These are tremendously powerful arguments for an information-starved legislature. Remember that legislators sometimes make up their minds on gut reactions just because they don't have any other facts on which to make a decision.

Equally important, use cost-effectiveness as an argument. Many of us feel that the human values in foster care are far more important than budgetary savings. But it is utter folly to ignore the savings that can be demonstrated through permanency planning, particularly if those data are used as an appeal as against other programs that have much more nebulous fiscal implications.

4. Adopt a Positive Style of Advocacy. Advocates for permanent planning must emphasize how it reinforces the family, rather than how it destroys it. Too often, unthinking critics will focus on the latter aspect. You must emphasize that permanent planning is for children. You need to show that intensive work in this project can save, theoretically at least, otherwise unstable families, and that the project focus is on putting children in permanent family situations. Permanent planning advocates also can talk with great legitimacy about their solution-oriented approach. All too often, social programs fail to focus on demonstrable results. The outcomes of permanency planning can both potentially and actually be measured, as the Portland State study proved about the Oregon Project.

5. Cultivate Wider Constituencies. Be certain that you seek out wider constituencies than just the legislators themselves. Two different subgroups are particularly significant. One is composed of key staff members. Someplace in every legislature there are key staff members on the vital committees. Failure to persuade these people practically insures that your program will remain on the back burner. Second, make sure to develop a wider constituency of citizens of the state who have had long time interests in your area. Sometimes these persons can be mobilized through an interim committee study or task force which involves key community and statewide child care personnel.

If you fail to expand into these constituencies, those groups that have been excluded from the development of statutory proposals will often feel that their "turf" has been invaded and will react by trying to kill your proposal. It is infinitely easier in any state legislature to kill something than pass it, because a diagram of steps in the procedure is not a flow chart but an obstacle course! Every additional hearing, each additional committee referral, and each day of delay is an additional opportunity for opponents to mobilize. Developing constituencies that might otherwise feel left out or oppose you is a critical strategy.

6. Know the Legislative Process and Identify Key Supporters. Identify members who are of the majority party controlling the legislature, who really have an interest in child advocacy legislation, and who have identified themselves with these issues in the past. Identify also the key people on the committee that will make the appropriations. Approach legislators early, before the session begins. It is impossible to convey much information in detail in the hectic session days. Finally, if you propose significant statutory changes, involve influential members of the Judiciary Committees of both houses.

7. Prepare Testimony for a Hearing. The hearing process in most state legislatures is terribly important because sometimes the hearing is the only source of personal information available to legislators. But it's often very unpredictable as a forum through which a sustained, rational and public presentation can be made. An effective advocate must therefore work within the committee which will make the decision. The advocate must be certain that important legislators, the sympathetic ones, are going to be present at the hearing. If they are not present, they must be "educated" (and present) by the time of the crucial votes and amendments in work session.

Written, well prepared testimony is vital: it is organized; it is in permanent form; it eases enormously the burdens of media representatives and legislators in following the argument of a witness; and it adds to the credibility of a legislative advocacy effort as being "well-prepared" - rather than "off the wall."

Write a synopsis of testimony to be circulated in advance, and subsequently, to legislators. I personally prefer short, five or six point, well-reasoned, two-page presentations akin to "Eisenhower intelligence summaries." Although it is difficult, and even insulting to be asked to reduce one's presentation to this degree, remember that in a state legislature you are engaged in an enterprise of persuasion, not necessarily of scholarship. Design at least a part of your written presentation to be something that legislators can carry around, put conveniently in their bill notebooks, and keep permanently. It may stand as the only information the legislator has on the issue.

8. Be Aware of Deadlines. The typical American state legislative session is a race against the clock. If a bill is not passed by adjournment, the idea probably will be dead for a biennium, or at least until the next annual session. It is critical to win procedural and substantive victories early in the session. Legislative measures should pass the house of origin early. Advocates must persuade chief legislative officials to push your legislative proposals to the top of their personal priorities. Otherwise they may die within the calendar limits of the session.

9. Don't Neglect Fiscal Considerations. Do not forget the fiscal impact of a particular bill - especially the need to secure adequate funding for

new program approaches. It is folly to make a new change in the legal structure of a foster care system without conveying vital budgetary information to other relevant committees concerning, for example, new or alternative incentive systems which demand new or alternative budget strategies. It is obviously important to watch all points of access in the legislature necessary to secure implementation of new programs.

10. Reward your Supporters. The final point should be self-evident. Protect your flanks and reward your helpers. Keep your advocates well informed. Proselytize your successes; and give credit to the legislative friends for passing highly technical bills that involve enormous work. People in the field who have some sensitivity to the importance of legislative-generated reforms should at least express their public gratitude to legislators who may repeatedly take considerable political risks to do what is right. The simple currency of "thank you" goes a long way and will be remembered the next time you appear as an advocate for new legislation.

TEACHING RESOURCES:

In this module:

- Article: "An Introduction to Case Law for Social Workers" by Mark Hardin
- An Appellate Opinion: The Blum Case
- A Completed Worksheet on the Blum Case
- Worksheet: Case Law
- Booklet: "The Case Law Compendium: A Tool for Social Workers" by John M. Volkman

Other Resources

- State and federal appellate opinions on termination of parental rights
- Lawyer or law professor to conduct a session on techniques for reading case law.

GENERAL LEARNING OBJECTIVES:

The materials in this module are designed to help students to:

- read an appellate opinion with understanding
- draw implications for child welfare practice from the legal opinion
- learn how to set up a case law compendium on decisions in termination of parental rights cases.

TEACHING STRATEGIES:

The material in this module is designed to introduce caseworkers to the skill (and the art) of reading appellate court decisions and applying them to their practice in child welfare. Of course, social workers would not expect to draw conclusions from the law with the assurance of practicing lawyers, but even a little familiarity with the language and tone of the decisions, as well as discussion of the actual decisions, can give guidance to caseworkers in planning for foster children.

The article which introduces the module gives background information on the role of case law in the legal system and how it relates to child welfare practice, and gives some suggestions for reading case law material with understanding. It can be used as a handout, or as a basis for a lecture from a local, practicing attorney. Discussion of recent case decisions on relevant aspects of child welfare would also be an appropriate topic for a guest speaker.

The appellate opinion and completed worksheet on the Blum case are included as an example of how case law could be presented in class. With the help of an attorney, the trainer or teacher could present one or more appellate decisions from the students' own appellate court, along with worksheets filled out in advance. The questions and answers on the worksheet can be used as a focus for class discussion on particular court opinions. As students gain in skill, they may want to fill out worksheets on their own and discuss the answers. A sample worksheet is included, from which copies can be made for classroom use.

The booklet on making case law compendia is included as a suggestion for a project for advanced students. Finding relevant cases and copying, indexing, and filing them would be an appropriate term project. Legal advice should be made available to students on the location of the local law library and on techniques for finding cases in them.

AN INTRODUCTION TO CASE LAW FOR SOCIAL WORKERS

by Mark A. Hardin, J.D.
Permanent Planning Project

An attorney who refers to "case law" is referring to written decisions of judges, usually judges of higher courts. Written legal decisions by judges play a major role in our legal system in defining the rules of law as a whole.

To understand the role of case law in our present legal system, it is helpful to know something about the role of case law in the past. During an earlier period of English and American law, case law was the only law governing many subjects. That is, many areas of the law developed in the absence of legislation, through a case by case determination by judges. But the case decisions of judges were not decided in a vacuum. Case decisions were made by applying and analyzing the stated principles of earlier cases. Efforts were made to maintain consistency between cases, to follow precedent, to weave a consistent set of principles into the written case decisions. A further unifying factor was that lower courts were bound to follow and apply the decisions and principles announced by superior courts.

There has been an increasing trend in the law, at least since the turn of the century, toward supplanting case law with legislation. Although legal principles are sometimes revised in the written decisions of judges, more often systematic revisions come about through legislation. Although the role of case law has lessened in the face of increased legislative coverage of issues, it still has important functions today. There are still many gaps in the coverage of legislation, areas that are untouched by statutes. For example, many states have no statute dealing with the accessibility of adoption records to adopted children who have become adults. There, the law, if any, must be found in cases.

Even more important than gaps in coverage left by legislation are ambiguities and vague generalities in statutory language. Although courts are bound to follow legislation which is consistent with state or federal constitutions, even if the legislation overrules prior case law, case law performs a major function in refining legislative provisions. Many state's statutes set forth very vague standards concerning when children may be made wards of the court, when children may be removed from their parents, and when termination of parental rights may be ordered. It is thus left to the courts to decide in specific cases what action to take and precisely which principles to apply.

For example, the Oregon statute, ORS 419.476 (1)(e) provides that a child may be made a ward of the court whose parents have ". . . failed to provide him with the care, guidance, and protection necessary for his physical, mental, and emotional well-being. . ." The quoted language is far from self explanatory and must be explained and applied by the courts. It is necessary to read interpretations of the statute which exist in case decisions, before we can be sure that we understand the effect of the statute. The statute alone does not answer, for example, whether a child whose parents refuse to send him through a particular recommended course of psychiatric treatment might be made a ward of the court for that reason.

Case Law and Social Work Practice

Casework practice and the appellate process relate to each other in two ways. Caseworkers can comprehend the state's body of juvenile law only by being familiar with both the juvenile statutes and the case law interpreting them. When the attorney's office representing the children's service agency becomes aware of a legislative or case law change that affects agency practice, the case or statute is sent to key agency personnel. It may be necessary for the attorneys and agency to work together to adopt formal rule changes, as outlined by the state's administrative procedures act. Eventually, implications for practice of changes in the law will be reflected in agency policy and manual provisions.

The role of the social worker in the legal process is more than the passive absorption of termination of parental rights statutes and case law, however. The social worker also may help shape the law by thoroughly thinking through the issue of when termination of parental rights is appropriate and then presenting appropriate cases. By presenting his rationale through the evidence of the particular case, including his own testimony and the testimony of expert witnesses, the social worker affects both the outcome of the case and the manner in which it is decided.

How to Read Appellate Court Opinions

There are both major pitfalls and real potential value in the reading of appellate cases by caseworkers. Pitfalls can largely be avoided. They mostly arise from overestimating one's own ability to analyze and apply cases. Reading appellate cases can be valuable to caseworkers in several ways. Appellate cases may be the only available guidance on the law of termination of parental rights other than the language of the state statute itself. Reading cases makes the legal process less mysterious and helps the worker get a feel for the process of legal thinking. It helps the worker to fathom how legal decisions are made. Also, reading the original case is more likely to make an impression as it retains all the flavor of the legal tradition.

The caseworker's task in reading a case is to understand the legal principles of the case as they are applied by the court to the set of events involved in the dispute. That is, the caseworker should know the events that resulted in bringing the case to court, what decision was made, and how the legal principles were applied to the facts. Beyond understanding how the court decided the particular case, the caseworker should consider how the stated principles might apply in other situations and to regular casework practice.

There is no single technique for reading cases, but certain elements, derived from the study of formal logic, can usually be identified in each case. The decision and reasoning of the court is the key element of a case. But linking the decision to the events giving rise to the case and the issues found by the party appealing makes it easier to properly identify the decision and avoids the temptation of applying the court's words too broadly. It is critical to understand which facts were crucial to the case and which, if changed, would alter the result.

Let us now consider the three elements: the "facts", the legal issues, and the decision.

- The Facts. The situation giving rise to the case and appeal is referred to in legal parlance as the "facts." The facts include but are not limited to that evidence and information that was presented in the case. The facts also include events that took place in the lower court, such as objections raised in the trial, motions filed, and so forth. The facts are information that was provided and events that happened in the lower court that could have a bearing on the outcome of the case. For the purposes of appeal, the facts to be considered are only those which appear in the record of the hearing in the lower court. The record may include a transcript of the proceedings as well as exhibits offered into evidence.

Indeed, caseworkers are sometimes nonplussed by the presentation of the facts in appellate cases with which they were directly involved. The facts seem to be slanted or do not include events which the caseworker considered important. This may occur even when the caseworker and attorney have carefully presented the information to the lower court, following the rules of evidence. Only selected and filtered versions of the facts appear in the appellate decision, partly because facts will not be mentioned in the appellate case which have no bearing on the outcome of the appeal, or which the appellate court missed in its review of the case.

- The Legal Issues. The issues of an appellate case are raised by the parties involved in the appeal. The party filing the appeal must try to demonstrate why the lower court was wrong, and why its decision should be changed by the higher court. Issues presented to the court by the party appealing the case (the "appellant") are sometimes referred to as "assignments of error." In general, an appellate court will only order reversal when the lower court has made a serious error in applying the law or evaluating the evidence. Two common legal bases of appeal in termination cases are that the lower court ruled wrongly on admission of evidence or applied incorrectly the grounds for termination given in the statute. Appellate courts are reluctant to reverse lower court decisions unless that court erred grossly in evaluating the evidence, so the burden of proof is with the appellant. Usually, the appellant raises more than one issue on appeal, so expect to find several in the case. Each legal issue will be decided separately, in light of the particular facts pertinent to that issue.

- The Decision. The decision of the case either accepts or rejects the assignments of error. If the issues raised by the appellant are found to be valid, the lower court decision might be reversed or modified, or the case might be sent back to the lower court for further consideration ("remanded"). Each party, of course, argues that the issues should be decided according to the legal rules and interpretations of the facts which are favorable to their side. Typically, the appellate court will discuss the arguments of each party to the appeal, indicating which is more correct and why.

Implications for Child Welfare Practice

Understanding the broader implications of the case is the most difficult task. There is often room for disagreement about just how far the stated rule of an appellate decision applies to slightly different facts, and many difficult questions may be presented when a caseworker attempts to analyze what effect, if any, the decision has on actual casework practice. Yet, the ultimate purpose of reading a case is to determine its broad implications and to guide the worker in how she performs her work.

In the Matter of David Eugene Blum,
a minor child.

STATE of Oregon, Respondent,

v.

Carlene BLUM, Appellant.

Court of Appeals of Oregon,
In Banc.

Argued and Submitted Nov. 17, 1969.

Decided Jan. 8, 1970.

Proceedings for termination of parental rights of mentally ill mother of an illegitimate child. The Circuit Court, Multnomah County, Carl A. Dahl, J., ordered termination, and mother appealed. The Court of Appeals, Langtry, J., held that parental rights of mentally ill mother could be terminated under statute providing for such termination upon finding that parent or parents are unfit by reason of conduct or condition seriously detrimental to child.

Affirmed.

1. Infants 🔑16.3

Prime consideration in determining whether or not to take parental rights away from parent is best interests of the child. ORS 419.523(2) (a).

2. Infants 🔑16.3

Under statute providing that parental rights may be terminated if it is found that parent or parents are unfit by reason of conduct or condition seriously detrimental to child, parent need not by some conduct create a condition which causes parent to be unfit before parent's rights can be terminated. ORS 419.523(2) (a).

3. Infants 🔑16.8

Under statute, judgment terminating parental rights must be supported by preponderance of the evidence, proving that parent is presently unable to supply physical and emotional care for child and that condition will probably continue for time enough to render improbable successful integration of the child into a family if parent's rights are not terminated. ORS 419.523(2) (a).

4. Bastards ⊂⊃15

Evidence supported findings that mentally ill mother of illegitimate child was unable to provide physical or emotional care for child and that mother's condition was probably permanent and supported subsequent termination of parental rights of mother, under statute. ORS 419.523(2) (a).

◆

Ted E. Runstein, Legal Aid Service, Portland, argued the cause for appellant. With him on the briefs was Ronald I. Gevurtz, Legal Aid Service, Portland.

Elizabeth Preston, Deputy Dist. Atty., Portland, argued the cause for respondent. On the brief were George Van Hoomissen, Dist. Atty., and Richard J. Knapp, Deputy Dist. Atty., Portland.

LANGTRY, Judge.

This appeal questions whether the parental rights of a mentally ill mother of an illegitimate child may be terminated under the provisions of ORS 419.523(2) (a). The defendant is unable to provide physical or emotional care for the child, and competent medical testimony indicates her condition is probably permanent.

The child involved was born September 30, 1962, and is one of the defendant's three children. The defendant was committed to Dammasch State (mental) Hospital on July 2, 1963. At the time of the hearing on the petition to terminate parental rights, May 31, 1967, she had been in and out of the state hospital four times. She was represented by counsel and a guardian ad litem. Her diagnosis by a staff psychiatrist of the state hospital was "personality pattern disturbance, inadequate personality superimposed on schizophrenic reaction, chronic, simple type."

Dr. Carl V. Morrison, psychiatrist and Director of the Community Child Guidance Clinic in Multnomah County, who had examined defendant, testified that she suffered from "Paranoid schizophenia [sic], chronic." He stated that the prognosis is that the defendant will never be able to care for the child. No evidence to the contrary was offered.

The record shows that defendant's illness, in its recurrent serious manifestations, includes frequent bizarre hallucinations, often involving feelings of severe physical persecution by the doctors in whose charge she was placed; long continued periods of depression in which she is hysterical and cries continuously; refusal to accept simple responsibility involving her own personal care; and rejection of any responsibility for her child.

During periods when defendant was out of the hospital, she was under supervision in boarding-house situations in Portland. The child also lived in a foster home in Portland. Until April 14, 1967, defendant was urged by caseworkers to visit the child, but made only one visit. In the order terminating parental rights, the trial judge found, *inter alia*:

"* * *

"c. Carlene Blum * * * will be unable to provide care for the * * * child in the foreseeable future.

"d. The * * * mother * * * has shown no interest in the * * * child up until the date of April 14, 1967, at which time this court denied any future visitation * * *

"* * *

"f. * * * [T]he child has remained in foster care with supervision provided by the Multnomah County Public Welfare Commission since on or about the 27th day of August, 1963.

"5. The court further finds, having been involved with this case for over a year and having given considerable thought to the issues presented concerning the rights of parents and the right of a child, that the mental illness of the mother of the above-named minor child is a condition which was contemplated by the Legislature as basis for termination of the parental rights of a parent.

"6. The court further finds * * * that the mental condition of (Mrs.) Carlene Blum, which condition is incurable within the foreseeable future and seriously detrimental to the child, has made her unfit as a parent and that for the best interests of the above-named minor child the parental rights of the said Carlene Blum, mother of the above-named minor child, should be permanently and irrevocably terminated * * *."

The trial court's judgment was legally based upon ORS 419.523(2) (a), which provides:

> "* * *
>
> "(2) The rights of the parent or parents may be terminated as provided in subsection (1) of this section if the court finds that the parent or parents:
>
> "(a) Are unfit by reason of *conduct or condition* seriously detrimental to the child * * *." (Emphasis supplied.)

Defendant's "condition" renders her unfit to have the child's care; therefore, a simple application of clear language indicates the trial court was right. However, the defendant contends that the statute implies that the mother must have, through her conduct, "created a condition" seriously detrimental to the child, and cites several Oregon cases as support. In Simons et ux. v. Smith, 229 Or. 277, 366 P.2d 875 (1961), it was said that "The reason for terminating parental rights ought to be related to the parent's conduct as a parent." In that case the statute in question here was not involved. There, the natural father of the child was objecting to a petition by his former wife and her present husband to adopt his children. Therefore, where the court was speaking of "terminating parental rights" it was not speaking of ORS 419.523(2) (a). Defendant cited five cases in which the statute here in question was quoted by the Oregon Supreme Court. The court in none of them had reason or attempted to construe the meaning of the word "condition," with reference to mental illness.[1]

In State v. Grady, Footnote 1, supra, it was held that the rights of the mother could not be terminated because she was in prison. The trial court had found that the mother's parental rights should be terminated by reason of her conduct and her condition of being in prison and thus unable to care for her child. The Supreme Court reversed, indicating that the mother's rights to the child should be preserved as an aid to the mother's possible rehabilitation. This, as a reason, counters the familiar principle that in proceedings of this nature the best interests of the child are the prime consideration. There is no reason to believe the legislature intended to place the interests of a parent ahead of those of a child.[2] The "condition" of the

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[1] State v. Jamison, 86 Adv.Sh. 1283, 444 P.2d 15 (1968); State v. Winters, 243 Or. 313, 413 P.2d 425 (1966); State v. Grady, 231 Or. 65, 371 P.2d 68 (1962); Cutts v. Cutts, 229 Or. 33, 366 P.2d 179 (1961); and State v. Easley (Hull), 228 Or. 472, 365 P.2d 293 (1961). In State v. Grady, supra, 231 Or. at 67, 371 P.2d at 68, the court stated that the statute provides for termination where the parent is unfit by reason of "conduct or conditions which were seriously detrimental to the child." (Emphasis supplied.) As noted in text the language of the statute is "conduct or condition." In State v. Easley (Hull), it appears that the court was under the impression that the statute's requirement is that the parent's "conduct *and* condition [must have been] seriously detrimental to the welfare of the children." (Emphasis supplied.) 228 Or. at 473, 365 P.2d at 294. In these cases, the possible misapprehension of the court as to the actual language of the statute may have had a bearing upon the decisions made. In the other three cases the issues all revolved around parental "conduct" as distinguished from "condition."

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[2] The committee which prepared it, in its report tendering the act, including the statute in question, to the legislature, said:

> "* * * [P]resent law represents altogether too great an emphasis on the rights of the parent and too little emphasis on * * * *the interests of the child* * * *." (Emphasis supplied.) Report of the Legislative Interim Committee on Judicial Administration, PART II Juvenile Law 22–23 (1959).

In discussing State v. Grady, supra, in his article entitled Trends in Oregon Family Law, 43 Or.L.Rev. 193, 209 (1964), Professor Paul Larsen said:

> "* * * The court was concerned about the possible adverse effect on the mother's rehabilitation which might re-

mother in *Grady* was that she would spend several years in the penitentiary. The court reasoned she would then be free and in a position to take care of her child. That does not parallel the case at bar. Here, there is little prospect that the child can ever be in the mother's care; indeed, there is little prospect the child will become other than a boarder with any family if the mother's rights remain outstanding.

In 39 Or.L.Rev. 305, 312 (1960), the Honorable Ralph M. Holman, who was chairman of the interim subcommittee which prepared and submitted the juvenile code to the Oregon legislature, including the part of the act in question here, explained:

> "* * * [T]he emotional welfare of the child requires that he be integrated as a member of a family * * *.
>
> "It was the feeling of the committee that a child would never have an opportunity to be completely integrated in another family as long as any legal relationship, privileges, or responsibilities whatsoever remained with respect to his real parents. Thus, the child's emotional well-being and his resultant relationship to society in truth require not only a permanent severance of custodial rights but of all rights."

Dr. Morrison, after testifying to his diagnosis of defendant, said that it would be damaging to the child to be with defendant. He enlarged on that answer by stating:

> "It's damaging in this way: In that the emotional well-being and growth and confidence that a child needs must come from his immediate environment and particularly people in which his custody is charged, that is his own parents or the parents with whom he is living. This is something that is acquired very directly by living with people, not just what they say but the reactions that the adults have. They absorb the strength or the weaknesses, the health or sickness of the person with whom they live."

The defendant's answer to this is that she is not seeking custody of the child, she simply does not want her parental rights to be terminated.

[1] It is important that the child have a sense of belonging to a family. This is one of the things we look for after we say that our prime consideration is the best interests of the child. It is not in the best interests of the child to keep him forever in a limbo—a limbo that is terminated, if at all, when on some uncertain date his mentally ill mother recovers and gives him normal mother's care. For this child it may well be that at his present age of seven and one-half years it is already too late to successfully integrate him into a family. If it is not too late, it is important to get it done soon.[3]

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sult from her daughter being taken away from her; this concern seems to have clouded its view of all of the evidence of unfitness. The best interests of this child seem to have been sacrificed in a speculative effort to promote the best interests of her mother."

Proceeding on, Professor Larsen criticized State v. Easley (Hull), Footnote 1, supra:

> "Here again we see the court manipulating the clear language of a statute to impede an effort by the state, acting through the juvenile court, to reshape a family relationship. The court's attitude toward legislation in this area borders on hostility. Most of the other cases discussed in this article [including Cutts v. Cutts, Footnote 1, supra] buttress this conclusion * * *." 43 Or.L.Rev. at 209.

[3] Cf. Carl P. Malmquist, M. D., The Role of Parental Mental Illness in Custody Proceedings 360, 364–65 (Vol. II, No. 4, ABA Family Law Quarterly 1968). At page 374 of the same article, Dr. Malmquist says:

> "'Closeness to a mother in a depressive phase, or a schizophrenic episode may give rise * * * to the kind of aftereffect which shows up years later * * * as the starting point for mental trouble.' * * * There is also evidence that the chronicity of an illness in a parent, be it psychological or even physical, may be a contributory factor to emotional disturbance in a child due to the social and familial disruption which is attendant upon any long-standing disease. In part this is also due to the greater stresses put on a family with a mentally ill parent,

[2] We hold that the use of the word "condition" in ORS 419.532(2) (a), separated by the disjunctive from the word "conduct," is clear.

> "In the construction of statutes the governing rule to be followed and the one which is law and binding upon the court is to ascertain and declare the legislative intent. ORS 174.010 and 174.020 * * *.
>
> "It is elementary that when the legislature, in enacting a law, makes use of plain, unambiguous, and understandable language, it is presumed to have intended precisely what its words imply. There is no occasion to go beyond those words and their plain meaning to ascertain by application of rules of statutory construction the legislative purpose." Franklin v. State Ind. Acc. Com., 202 Or. 237, 241, 274 P.2d 279, 280–281 (1954).

We reject, because the clear language of the statute does not say or imply it, the contention that a parent must, by some conduct "create" a condition which causes the parent to be unfit before the parent's rights can be terminated.

[3, 4] We are aware of the gravity of separating a child from his natural parent. A court's judgment terminating parental rights under this statute must be supported by a preponderance of the evidence, proving (1) that the parent is presently unable to supply physical and emotional care for the child (if necessary, with the aid of social agencies available), and (2) that this condition will probably continue for time enough to render improbable successful integration of the child into a family if the parent's rights are not terminated. The evidence in this case supports the findings made by the trial judge.[4]

Affirmed.

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especially if it is the mother." (Dr. Malmquist is associate professor of Child Development and Psychology, University of Minnesota, and adjunct professor of law at the University of Minnesota and psychiatric consultant to the District Court in Minneapolis.)

[4] A 1961 publication of the Children's Bureau, Social Security Administration of the United States Department of Health, Education and Welfare, entitled *Legislative Guides for the Termination of Parental Rights and Responsibilities and the Adoption of Children*, agrees with this result. The "legislative guides" were attained after extensive study throughout the United States and with the aid of many legal and social service experts. On pages 14, 15, and 16 of this publication appears:

> "The following are recommended as grounds for involuntary termination * * * (c) that the parent is unable to discharge parental responsibilities because of mental ilness or mental deficiency, and there are reasonable grounds to believe that such a condition will continue for a prolonged indeterminate period.
>
> "* * *
>
> "* * * [P]hysical incapacity * * should not be a ground [to terminate parental rights] because the parent could still give the child love and affection * * *. Therefore, there would be no need to sever the natural relationship. Even when a parent has to be hospitalized indefinitely for physical reasons, it is felt that a continuation of the natural tie is of great importance to the child and his parents. Moreover, with rapid advances in medical knowledge, some disabling conditions might be corrected in the near future * * *.
>
> "Opinion is divided on whether mental incapacity should be a ground for termination. One viewpoint is that * * * a mental condition considered incurable today may be amenable to treatment tomorrow; therefore, mental incapacity should not be a ground for termination. The opposite view is that there are situations in which substantial evidence can be produced of severe mental illness * * * of a permanent nature * * * *here the natural tie should be severed* to permit the child to have meaningful parental relationships through adoption.
>
> "* * *
>
> "In any instance of parental incapacity, it is not the incapacity by itself that is a ground for involuntary court action but rather it is where the incapacity renders the parent unable to discharge parental responsibilities for a prolonged indeterminate period." (Emphasis supplied.) Children's Bureau, Pub. No. 394—1961.

A COMPLETED WORKSHEET ON THE BLUM CASE

1. The Facts

What were the events leading up to litigation? (The facts of the case)

The child was removed from his mother at infancy, had never lived with her, and had visited her only a few times. He is now 7 years old, and has been in foster care most of his life. The mother has had many commitments to a mental hospital, and a psychiatrist gave a prognosis that she would never be able to care for the child. There was no evidence that the mother intentionally neglected the child.

What happened in the trial court, that is: who initiated court action against whom?

*The State of Oregon initiated court action against Carlene Blum.**

What outcome was he, she, it seeking?

It was seeking to terminate her parental rights to her seven and a half year old son.

Was the petition granted or denied?

Granted.

If granted, what did the petitioner get?

Carlene Blum's parental rights were terminated.

2. The Issues Raised on Appeal

Who appealed? (i.e., who is the appellant?)

Carlene Blum is the appellant.

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*The state may be the petitioner officially, but the caseworker, court counselor, or private party may actually have initiated the petition.

What error(s) does appellant claim that the trial court made?

Appellant claims that the trial court erred in ordering the termination of her parental rights based on the evidence presented to the court. Specifically, she claims that it was an error to terminate her rights solely on the basis of her mental illness.

What does appellant claim that the trial court should have done?

Appellant asserts that the trial court should have denied the petition to terminate her parental rights.

Why, according to appellant, was the trial court incorrect?

Apparently, appellant's argument is that the trial court should not have terminated her parental rights without proof that she had engaged in misconduct as a parent or "created" her condition of mental illness. The argument, based upon the wording of the Oregon termination statute and previous appellate cases, was that termination should not be ordered, based only upon a "condition" such as mental illness. Rather, there must also be some voluntary course of conduct by the parent, "creating the condition" and making her unfit.

Note: The appellate court unfortunately failed to clearly explain the basis of appellant's argument in this case.

3. The Decision

How does the appellate court rule on the issues raised by appellant?

The appellate court rules that when mental illness renders a parent unfit to care for her child in the foreseeable future, termination can be ordered without a showing of parental misconduct.

What reasons does the court give for its ruling(s)?

The court says that the plain language of the statute provides that parental rights may be terminated based on a showing that the parent is unfit by reason of "conduct" or "condition." A condition of mental illness serious enough to make a parent unfit can thus support a termination of parental rights in the absence of a showing of parental misconduct. The court also indicates that the best interests of the child figure into the decision whether to terminate and that termination is generally in the best interests of a child when its parent will never be able to resume her duties as a parent. The court cites legal and social work treatises on the need of a child to become integrated into a home with close and stable ties between parent and child.

4. What implications does the decision have for child welfare practice?

What, if any, are the implications of the appellate case for:

-- how certain kinds of cases are likely to come out in court?

Where there is a history of severe parental psychological disturbance and strong psychiatric evidence that a parent will be unable to resume her parental rule, an Oregon court will probably terminate her parental rights. This is true even if the parent has been away from the child and hasn't intentionally neglected it.

-- how to decide whether to bring certain types of cases to court?

The decision whether to bring a case for the termination of rights of a mentally ill Oregon parent should be based upon the strength of psychiatric and psychological evidence that is available or can be developed. If other grounds are also applicable, such as abandonment or mistreatment of the child, or failure to respond to agency treatment planning, other evidence must, of course, be looked at to assess the strength of those grounds.

-- how to prepare certain types of cases for court?

To prepare a termination case based upon mental illness, medical history should be assembled, psychiatric evaluations should be arranged, and arrangements should be made for psychiatrists and psychologists to appear as witnesses.

-- how to handle certain cases on a routine basis?

In view of the importance that the Oregon court places upon psychiatric testimony, it is appropriate to gather psychiatric information in cases where a parent or child appears to be seriously disturbed. In addition to helping the social worker to devise a treatment plan, the evaluation and prognosis may be helpful to the decision whether to seriously consider seeking a termination of parental rights.

WORKSHEET: CASE LAW

The following questions are designed as a guide for reading and understanding appellate court decisions. Remember that sections 2, 3, and 4 of the worksheet should be done for each separate issue raised in the case on appeal.

1. The Facts

What were the events leading up to litigation? (A summary of the facts of the case presented in the decision.)

What happened in the trial court, that is:

Who initiated court action against whom?

What outcome was he, she, or it seeking?

Was the petition granted or denied?

If granted, what did the petitioner get?

2. The Issues Before the Appellate Court

Who appealed?

What error(s) does the appellant claim that the trial court made?

What does appellant claim that the trial court should have done?

Why, according to appellant, was the trial court incorrect?

3. The Decision

How does the appellate court rule on issues raised by appellant?

What reasons does the court give for its ruling(s)?

4. Implications for Casework Practice

What, if any, are the implications of the appellate case for:

-- how certain kinds of cases are likely to come out in court?

-- how to decide whether to bring certain types of cases to court?

-- how to prepare certain types of cases for court?

-- how to handle similar cases on a routine basis?

THE CASE LAW COMPENDIUM: A TOOL FOR SOCIAL WORKERS

by John M. Volkman, J.D.
Permanent Planning Project

The Case Law Compendium

Caseworkers concerned with finding permanent homes for children must in many instances rely on lawyers and judges. Key steps in the process of securing permanency for children require formal legal action. Permanency planning is thus heavily dependent on the legal system. In order to work effectively in this setting, caseworkers should be familiar with relevant law and procedures.

One resource available to help caseworkers to become familiar with the law is the case law compendium. The compendium consists of state court decisions (case law) which discuss the state's juvenile laws, and apply them in specific instances. For our purposes, the compendium is limited to cases which involve laws and procedures which may involve foster children. Generally this restricts the compendium to cases involving dependency and neglect, foster care review hearings, termination of parental rights proceedings, the adoption process, and appeals.

The case law compendium is not intended to provide legal advice, or to substitute for the expertise of a lawyer. Because juvenile law is complex, it is critical to involve a lawyer in cases as soon as they appear headed for court. The compendium is primarily an educational tool, to familiarize caseworkers with the law so that their casework is more responsive to it, and to equip caseworkers to deal effectively with lawyers and judges. The compendium provides no quick and easy answers to legal questions. It will be useful to the caseworker who is willing to read court opinions in order to gain an understanding of the dynamics of juvenile law.

How to Develop a Case Law Compendium

The first step in compiling court decisions for the compendium is to locate the names and citations of juvenile law cases in your state. Once located, they must be duplicated, entered into a binder, and appropriately indexed.

Most of the states will have a juvenile law manual which was prepared for lawyers in the state, which contains the names and citations of relevant court decisions. A list of those cases should be made containing both names and citations. The list should be up-dated with the help of an attorney or with a Shepherd's citator (described below).

If there is no juvenile law manual for your state, the task of obtaining case names and citations is more difficult. In states with little case law, it may be possible to locate cases without great effort. However, if your state has a large body of case law it is essential that you start either with an authoritative juvenile law manual, or with the help of an attorney or experienced legal researcher.

Once the list of cases and citations is compiled, each case must be located in a law library and duplicated. Case citations are given in the following form:

	(citation to official reports)			(citation to West reporters)			
Smith vs. Jones	**109**	**Ore.**	**41**	**376**	**P.2d**	**509**	**(1977)**
case name	vol. no.	official report	pg. no.	vol. no.	West reporters series	pg. no.	date of decision

All case citations, except for federal cases, will be given in this form, although different "reporters" exist in different states. For most states, decisions are printed in two reporters: the official reports and the West reporters.

Official reports are published by the state government, and are available in most law libraries in that state. Official reports contain the official texts of opinions decided by the appellate courts of that state. The reporter is abbreviated by the state's abbreviation (Ore., N.Y., Mont., etc.). Official reports are usually not copyrighted.

The West reporters are privately published and also contain the complete texts of decisions. The West system publishes decisions from every state, and is organized into regional reporters in which all state court decisions from a particular region are published.

Each of West's regional reporters has two distinct series. The initial series contains older decisions. The "Second Series" contains more recent decisions. The West system reports the text of each decision, and, prior to each decision, provides sentence summaries (called headnotes) of particular points made in the opinion. The text of opinions in the West reporters are not subject to copyright, and may be freely duplicated. The headnotes, however, are subject to West's copyright, and may be duplicated for re-publication only with written permission from West Publishing Co., in St. Paul, Minnesota.

Most state court opinions are printed in both official reports and West reporters. Thus, the citation for the 1977 case of Smith versus Jones contained in volume 109 of the official Oregon reports, beginning at page 41, and in volume 376 of West's Pacific Reporter, Second Series, beginning at page 509 is: *Smith vs. Jones*, 109 Ore. 41, 376 P.2d 509, (1977).

With this citation, we may go to nearly any law library and locate the case of *Smith vs. Jones*. Law libraries may be found at law schools, most county courthouses, state appellate court buildings, and many public and private law offices.

Once located and duplicated, the decision should be put into a ring binder in chronological order.

The compendium should also contain a copy of the state's Juvenile Code, since both caseworkers and court decisions will frequently refer to it.

Indexing

The purpose of indexing is to make the cases accessible to agency staff. The complexity of your index will vary according to the number of cases which have been decided in your state. If you have few decisions, the index may be very simple, and only the major headings listed below need be used. The following list is suggestive only, and should be expanded or contracted depending on the status of the law in your state and the needs of your agency.

Major Heading	**Possible Subheading**
ADOPTION	Jurisdiction of courts
	Parties
	Procedures
	Qualifications of parents
	Parental consent
	Confidentiality of records
	Subsidy
APPEALS	Who may appeal
	Determination of dependency/neglect
	Dispositional decision
	Termination of parental rights
	Adoption
	Review hearings
CHILD CUSTODY	
CONFIDENTIALITY OF RECORDS	
DEPENDENCY/NEGLECT	Defined
	Preliminary hearing
	Jurisdiction
	Parties
	Procedure
	Evidence
	Disposition
	Appeals
DUE PROCESS	
EMANCIPATION	
EQUAL PROTECTION OF LAW	
EVIDENCE	Standard of proof
	Admissibility
	Case record as evidence
	Expert witnesses
	Social workers as witnesses
	Testimonial privileges

- FOSTER CARE
- GUARDIANSHIP
- INDIANS
- JURISDICTION (See Adoption, Dependency, Termination, etc.)
- NEGLECT (See Dependency/Neglect)
- REVIEW HEARINGS
  - Purpose
  - Parties
  - Procedure
  - Evidence
  - Dispositions
  - Appeals
- RIGHT TO COUNSEL
  - Children
  - Parents
- SUBSIDIZED ADOPTION (See Adoption)
- TERMINATION OF PARENTAL RIGHTS
  - Jurisdiction
  - Grounds
  - Procedure
  - Parties
  - Evidence
  - Dispositions
  - Appeals

Using the Index

When a case is entered into the compendium, a notation should be made in the upper right corner of the opinion showing the appropriate index heading(s) and subheading(s) from the index list. The name of the case should then be entered under the appropriate heading(s) or subheading(s) on the index. The index must be up-dated as new cases are added. In addition, a summary of all cases, listed chronologically should be maintained. For each case in the summary, a one or two sentence summary should be given along with the case citation.

Warning!

Because case law is complex and changing, it must be approached with caution. New court decisions are handed down continually, and recent cases may reverse or modify prior case law. New statutes may radically alter the value of prior case law. Developments in constitutional law in state or federal courts may challenge the impact of state case law. A rule of law set out in a court decision may be modified by rules of court procedure or local practice. For all these reasons, it is important that the case law compendium be promptly up-dated, and that agency staff consult with attorneys regarding important questions of law and procedure.

Up-Dating

The primary method of up-dating is to keep track of court decisions as they are handed down. This may be done simply by reading regularly the state court "Advance Sheets" containing recent decisions of your state's appellate courts. Advance Sheets are available on a subscription basis, typically from the State Court Administrator, and contain the complete text of opinions. Some Advance Sheets also contain, in the front of the publication, a paragraph summary of each reported case, greatly facilitating the task of finding the decisions which are of concern to you. Each relevant new decision should be duplicated, indexed, and entered into the ring binder as it appears. It is essential that someone has clear responsibility for this important, never-ending task. The agency should have a current list of everyone who has a compendium so that each compendium can be kept current by sending out copies of new decisions, and up-dated index lists. In addition, you may periodically refer to the Shepherd's citator to see if it lists cases which may have escaped your notice. The citator, however, is no substitute for regularly reading Advance Sheets.

Shepherd's Citators

If you want to check to see if a case has been subsequently modified by a later decision, or if you want to see whether later cases have been decided on the same subject, a Shepherd's citator may be used. Each citator has a detailed set of instructions for using the citator. Shepherd's has a citator series for every set of reporters in the nation, both the official reports, and the West reporters. The citation of the case you are concerned with will be listed by volume and page number in the relevant citator series. Under each heading the citations of subsequent cases that refer to your case are listed. Shepherd's has an elaborate set of abbreviations analyzing the effect of each subsequent case, and is found in most law libraries.

Distribution

A case law compendium should be available to any caseworker or casework supervisor who can use one. The only limitation is that the agency should have an up-to-date list of everyone who has a compendium so that the compendium can be kept current by sending out copies of new court decisions.

Permanent Planning Project
Regional Research Institute for Human Services
Portland State University
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TEACHING RESOURCES:

In this module:

- Article: "Principles of Evidence for Social Workers in Preparing a Case for Termination of Parental Rights" by Mark Hardin
- Outline of Evidence Admissibility Issues
- Exercise: Hearsay
- Sample Evidence Chart of the Hoover Case
- General Guidelines for Evidence Charts
- List of Possible Witnesses and Documents
- Exercise: Preparing an Evidence Chart

Other Resources:

- Your own state statutes relating to admissibility of evidence
- Guest speaker: lawyer or judge with expertise in preparing evidence for juvenile dependency proceedings.
- Victor Pike, _et al._, _Permanent Planning for Children in Foster Care: A Handbook for Social Workers_, Regional Research Institute for Human Services, Portland State University, 1977.

GENERAL LEARNING OBJECTIVES:

The material in this module is designed to help prepare students to:

- understand the major admissibility issues that arise in preparing evidence for court;
- analyze their knowledge of a case to see how much of this "knowledge" can become admissible evidence;
- analyze evidence for possible hearsay; and
- apply evidence issues to a specific case through the Evidence Chart.

TEACHING STRATEGIES:

This module deals with the very complex issue of evidence. Specifically, the module tries to simplify the law of evidence and point out only the most generally useful concepts, in order to make something of the subject available to non-lawyers who nevertheless need to be concerned with taking cases to court. The danger of such an approach is, of course, that the simplification creates inaccuracies and misleading ideas. Students need to understand that a working knowledge of the concepts presented here will not prepare them to take a case to court by themselves. Its sole purpose is to help workers and others evaluate cases for evidence that will help persuade the court. However familiar a worker may be with a family and the events of the case, she needs to be able to go back over the record and study what she knows as potential evidence.

The first article, on principles of evidence, is intended to introduce the major evidence issues that a worker is likely to face. The outline at the end summarizes these issues, and is a handy guide for workers in answering the questions on hearsay in the exercise that follows. This material on evidence will be enhanced if the instructor can arrange for a lawyer to read it over in relation to the evidence laws specific to the state. Doctor-patient privilege, for instance, is handled differently in every state. This same lawyer, if possible, could come to the class to lecture from his state specific adaptation of the evidence article, and to help explain the answers in the hearsay exercise.

The rest of the material in the module concerns evidence charts. These charts are useful training tools, and may also be used in practice by workers preparing to present a case to a district attorney. In using this material in class, the instructor may want first to introduce the completed chart of the Hoover case, and then have the class discuss and possibly modify the entries. Students can then be asked to complete a chart of their own, either as a group or individually. Facts from the Turner/Sears case or Laura's case, both in Unit 1, can be used, or the instructor can get fresh case material. Cases that give examples of parental absence, mental illness, physical abuse, or other areas not covered by the Hoover case would be helpful. The General Guidelines for Evidence Charts suggests areas of proof and items of evidence for different kinds of cases, including possible witnesses and documents that may be required. Again, the participation of a lawyer experienced in juvenile law will give direction, clarity, and accuracy to the work. This exercise can also be used profitably with a combined group of lawyers and social workers, as its completion requires the special knowledge of each discipline.

PRINCIPLES OF EVIDENCE FOR SOCIAL WORKERS IN PREPARING A CASE FOR TERMINATION OF PARENTAL RIGHTS

by Mark Hardin, J.D.*
Permanent Planning Project

A termination of parental rights is an unusual proceeding, appropriate only to a small proportion of parents whose children have entered the juvenile court system because of neglect or abuse. But where parental inadequacy has been so serious and intractable that rights must be terminated, the child's needs for a stable and healthy placement are likely to be particularly urgent.

State statutes and cases establish the legal prerequisites for termination in particular states. Although there are sharp differences between the statutes, some generalization is possible. That is, termination is generally only granted in extreme cases, where clear harm caused by parents has been severe or where prospects for parental rehabilitation are very dim. The decision is usually made in terms of the interests of the children.

The most important task for the social worker in a possible termination case is to have done everything reasonably possible to sincerely work for the safe return of the child to her parents. It is also very important to have routinely kept thorough and complete records of the case. In those few cases where termination is appropriate, the case must be prepared and presented in accordance with the law of evidence. This paper is designed to assist you to do that.

The law of evidence determines which statements and documents may be used in a court proceeding to persuade the court to take or not to take a particular action. Only certain kinds of information are admissible into court proceedings; other information is excluded. The information must be pertinent, reliable, and must not violate the confidentiality of such protected relationships as that between a doctor and patient, for example. The body of rules which makes up the law of evidence is basically similar in all jurisdictions, regardless of the subject of the hearing or trial.

This paper describes the policies that the law of evidence requires, criteria the evidence has to meet in order to get admitted. These policies will be discussed under three major headings: Relevance, Reliability, and Protected Relationships.

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*Permanent Planning Project, Regional Research Institute for Human Services, Portland State University, Portland, Oregon. Copyright 1978. All rights reserved.

RELEVANCE

The first major policy of the law of evidence is to assure that information provided to the court is relevant to the case.

Determining the Legal Issues

If you have a case involving a possible termination of parental rights and are considering what information would be relevant in a legal proceeding, it is first necessary to know the legal grounds for termination in your state. Grounds that the court would consider in a case involving termination of parental rights are specified in statutes passed by the legislature and in decisions of courts of your state.

The general issue in termination of parental rights cases is the severe unwillingness or inability of the parent to care for the child. Information introduced in the hearing should be relevant to that point. In addition, many states require further that the unwillingness or inability of the parent affects the child adversely. For example, testimony that a parent keeps a sloppy house would not normally bear on whether that parent's rights should be terminated, because it doesn't indicate anything about the nature of the parent-child relationship or even the healthiness of the child's environment.

An item of evidence may be relevant in one case but not another, even between termination cases. That is true because in each termination case different factual issues are presented. For example, evidence that a parent has shoplifted while not in the company of the child is probably irrelevant. Such a crime does not bear on the parent's nurturing abilities. However, if the parent is mentally ill, the shoplifting episode might be introduced as a manifestation of the illness, in connection with expert psychological testimony.

Allegations in the Petition

The petition to the court requesting termination of parental rights lists which grounds will be the basis for legal action in a particular case. To be relevant, evidence must be related to the allegations in the petition. So it is important to have the petition written in a way that will allow all important and persuasive pieces of information to be submitted.

The following example shows how the relevance of a piece of evidence depends on the allegations included in the petition. If the petition for termination of parental rights alleges only that the parent is incompetent to care for the child because of the parent's emotional instability, it may be difficult to introduce evidence of certain specific neglectful acts. For example, if the parent has been financially able to pay support but has not done so, no evidence of non-support can be introduced, because non-support was not alleged in the petition and does not demonstrate emotional instability. Similarly, evidence that the parent failed to visit or deserted the child may not be introduced, except as it ties in with evidence of emotional instability. Thus, all real grounds for termination should be included in the petition. The petition should be written with great care.

Trivial and Unpersuasive Evidence

Even if relevant, much evidence should never come in because it is trivial or unpersuasive. It may be relevant that a parent has difficulty getting the child to eat vegetables but the judge may wonder why such a minor matter is being presented and begin to think that the whole case will be similarly trivial. Sometimes irrelevant or otherwise objectionable material will be allowed, either because an attorney does not object or by agreement of counsel. If no objection is made, the court will generally not interfere with the introduction of testimony or evidence. Of course, the social worker alone should not have to decide the relevancy of all the information he has. Rather the social worker should make all information that seems to have any bearing on the best interest of the child available to the attorney in an orderly, accessible manner.

RELIABILITY

Besides the problem of whether the evidence offered is relevant to the legal issues of the case, the evidence must not be of a type generally considered unreliable. Two important types of evidence commonly considered to be unreliable and therefore inadmissible by the court are hearsay and opinion.

Hearsay

The most important rule barring evidence thought to be unreliable by the courts is called the rule against hearsay. Hearsay is second hand information, information coming from someone who did not actually observe the incidents or facts being described. If a caseworker testifies that a neighbor told him that he saw the parent abusing the child, that testimony is hearsay. If the neighbor comes in and testifies that he saw the parent abuse the child, that is not hearsay.

Sometimes, however, second hand information is not hearsay. If one is not trying to prove the truth of what was said, but simply that it was said, it is not hearsay. For example, if the person raves that the sky is falling, the ravings may not be admitted for the purpose of showing that the sky was actually falling, but may be admissible to show the mental condition of the person doing the raving, if the mental condition of that person happens to be relevant. Or, if the social worker repeats an accusation of the child that the parent never comes to see him, that could not be used to show that the parent actually ignores the child - but may be admissible to show the nature of the feelings of the child toward the parent. Thus, if the statements are not being used to prove the truth of what was said, they are not hearsay.

Hearsay can be written or oral. A letter from a relative to a caseworker, for example, is hearsay, because the writing is a form of out-of-court statement. The relative may be present and refer to his letter, but if the relative is not in court, his letter might not be admissible into evidence over objection.

Social workers should generally be aware of the rule against hearsay because they are usually the ones responsible for keeping track of witnesses and summarizing their possible testimony to the attorney handling the case. If a third-party witness like a neighbor or friend has some powerful information, it is your job to keep track of that person and see that she is available for the trial. You should be aware that rumors and second hand information won't stand up in court - you must track down the actual observer of the incidents that are described to you. You can and should listen to and record second hand information in your notes, but you will have to decide whether the information is important enough to pursue further.

There are a few major exceptions to the rule against hearsay that come up often in juvenile court. They are: admissions of a party, excited utterances, and regularly kept records.

- Admissions of a party made out-of-court may be testified to by others. Each state's statute defines who is a party to a hearing, but in termination hearings, a parent is always a party. So, you can usually testify about what a parent has said to you in the course of your work. In some states, anything said by a parent may be repeated in court. In other states, only admissions of wrongdoing by the parent are admissible.

Admissions by parents may be extremely useful where evidence is otherwise impossible to obtain. For example, you may want to prove that the parent moves around a good deal, but you are unable to bring in all the former landlords of the parent from all over the country to testify to where he has lived. However, you can testify that the parent has told you about his various past residences.

You may want to write down immediately any striking statements made by the parent as part of your ordinary case notes. Repetition of a particularly vivid or telling comment in court can be powerful, such as a statement by a mother that she wants the child because she is afraid of being alone or feels unloved. A parent may admit past physical abuse and then try to deny it in court. Obviously, you don't want to take down every conversation but only things that seem particularly revealing, things that would seem appropriate to preserve in a good case record.

- Second hand reports of "excited utterances" can be admitted into evidence, provided that the utterance was made in a state of high emotion and relates to something that happened very close to the time the statement was made. The requirement that the person making the statement be excited is obvious and implicit in the term "excited utterance," but the requirement that the statement be made at or near the time of the occurence is both crucial and harder to remember. The statement, "Betty, stop hitting Sammy so hard!" repeated on the stand by a witness who heard the statement being made, may be admissible to show that the child, Sammy, was being beaten by Betty.

The idea behind the excited utterance exception to the hearsay rule is that excited utterances are especially reliable - they are made in a state of excitement before the declarant has had a chance to fabricate. The event must be sufficiently startling in and of itself to create high excitement and must involve a situation where making up a lie would be the last thing on someone's mind. Whether or not you believe that statements made in the heat of passion are generally truthful, the exception for excited utterances is a long-standing judicial tradition. Repetition of excited utterances may be valuable in court not only for its dramatic value, but also in situations where the declarant is unavailable, or is a child, and it would be preferable not to call him as a witness.

- Regularly kept records. The third major exception to the hearsay rule is designed to alleviate unnecessary expenditures of time and energy.

The business records exception. For certain business records, it is enough to call into court the clerk who takes care of the records. Those who made entries may not need to appear. In some cases, the clerk may not even have to appear. Familiar examples of records admitted as "business records" in termination cases are hospital and medical records. Hospital records include admission reports, nurses notes, lab reports, doctor's notes, and the like. It isn't necessary to call in all the nurses, technicians, and doctors. But, there is one major restriction to business records; the notes must generally concern events actually observed by the person writing the entry.

The official records exception is essentially like the business records exception except that it applies to records of government employees. The most frequent examples of records claimed to be public records are police reports, casework files, and school records.

State laws vary on the admissibility of casework files. It is usually clear that caseworkers can refer to their files in their testimony - the crucial question is whether notes from former caseworkers can be used as evidence when the former caseworkers are not present before the court. Reports from third parties, opinions, and impressions which appear in the case record generally cannot be considered.

Remember, either the originals or certified copies of the records must be brought to court. The agency will know how to certify copies.

Similar to official records are official documents. Official documents record events not subject to serious dispute, like marriages, births, and deaths. Certified copies of official documents are enough - it isn't even necessary to bring in the clerk in charge of the records. Precisely which documents are "official documents" depends on the law of the particular state.

Hearsay in Dispositional Matters, Including Termination of Parental Rights

After the original hearing establishing the jurisdiction of the court (adjudicatory or fact-finding hearing), subsequent hearings are called "dispositional." That is, "dispositional" hearings determine what will be done with the child after jurisdiction has been established. (In a few states, hearsay rules do not apply fully in termination cases because they are "dispositional.") See Module 2.1, The Juvenile Court System and Termination of Parental Rights, for a discussion of adjudicatory and dispositional hearings.

The hearsay rule is not usually applied strictly in a dispositional hearing. In fact, after the original adjudicatory hearing, the social worker usually makes a written disposition report and recommendation, largely based on information gathered from others. Later dispositional hearings, including review hearings, also involve a fairly loose application of the hearsay rule. In most states, termination cases are jurisdictional and the hearsay rules do apply. It is important to know whether that is true in your state.

Even in dispositional hearings, however, the worker should be aware of and careful about hearsay for several reasons. First, hearsay evidence is frequently less effective than first hand testimony - the court will give it less credence. Second, some courts will exercise their discretion and apply the hearsay rule rather strictly. Third, the hearsay statement might not be allowed if it has not been made known to the parent's attorney in advance of the hearing. The judge may not wish to deny the parent the right to confront and cross-examine adverse witnesses.

Opinion

The hearsay rule is the most important rule of evidence to ensure that only reliable information reaches the court. The other major rule designed to limit unreliable evidence is the opinion rule.

The opinion rule is basically simple; opinions may be given only by experts and may cover only subjects which require the testimony of an expert. A lay person can't testify that a parent has manic depressive psychosis, or that a child's developmental level is below normal. The opinion rule is designed to ensure that those witnesses who would state an opinion are qualified to have an opinion.

A key question for you, of course, is whether a social worker can qualify as an expert, and, if so, on what subjects can he give an opinion. There is no hard and fast rule. An MSW makes qualification likely; other experience and training is also important. But even the social worker who qualifies as an expert should be aware of the limits of his expertise, and should not try to diagnose precisely the disorders of the individual parent or child or to use precise medical or psychiatric terms such as schizoid personality and passive-aggressive personality. If you do plan to state an opinion about the nature of the family relationship or the desirability of a permanent plan, you should, of course, be prepared to discuss and defend your conclusions, having consulted with the state attorney, your supervisor, and perhaps a psychiatrist or psychologist.

Even if you do qualify as an expert witness, there would be no need to do so unless there is an important piece of information which you can get admitted in no other way. Primarily, your testimony will concern your actual work and observations you have made. Experience shows that the most effective testimony is usually that which is vivid and illustrative. Opinion is always less persuasive than actual observation, and would be a small part of your testimony in any case. See Module 2.5, Who's Afraid of Perry Mason?: The Social Worker on the Stand, for more information on expert testimony.

PROTECTED RELATIONSHIPS

Most people are aware of the confidentiality of communication to a doctor or lawyer, and are also aware that medical information will not be provided without a signed release by the patient. State laws governing protected relationships ("privileges") vary widely. It is important that you have a basic understanding of the law of privilege in your state.

The key issue of privilege in termination cases is the doctor-patient privilege. Note that some states have separate provisions for psychologists, but don't distinguish between physicians and psychiatrists. The issue is, when may a patient prevent a physician or psychotherapist from testifying against her. Or, to put it another way, what medical evidence can the social worker use in a termination case and how may it be obtained. Information about medical treatment of a parent for use in court can be obtained by the caseworker only with a voluntary written release signed by the parent, in most states. Medical and psychiatric examinations of the parent which have been arranged with the specific purpose of informing the court may be admissible even where past treatment is not. The purpose of the exam must be made clear in advance to the parent. It is helpful in some states to request the court to order an exam.

It is important to distinguish the privilege of the parent from that of the child. The out-of-custody parent will not normally have the right to claim the privilege and prevent testimony relating to the child's medical treatment. An attorney or guardian may have to be appointed to decide whether to exercise the privilege on behalf of the child. There may or may not be a child's privilege for statements made by the child while treated for child abuse in states with mandatory child abuse reporting laws.

The other privilege issue in termination cases which comes up with frequency is the husband-wife privilege. Again, the application of the privilege varies widely among states. In some states there is no privilege in termination cases. Other states make distinctions concerning whether the couple is still married, whether the testimony relates to confidential communications during the marriage, and whether one spouse can stop the other spouse who is willing to testify. Even where there is no privilege one must consider whether it is tactically sensible to offer the testimony of a disgruntled spouse. There clearly are times when such testimony is desirable, but the decision to call a present or former spouse to testify against the other should be made very carefully.

CONCLUSION

That evidence is admissible - i.e., allowed to be presented to the judge - does not imply its believability or ensure success of the case. The law of evidence does not consistently winnow out perjured or mistaken testimony. It is up to the judge to decide who is lying and telling the truth and to apply the principles of termination law to the facts of the case.

In many states, the judge must find that the evidence in favor of termination is stronger, even by a small degree, than the evidence against termination. That is called "a preponderance of the evidence." Other states require a very strong showing to justify termination - "clear and convincing evidence." Still other states haven't decided which standard of proof to apply.

Thus, while it is essential to present information in conformity with the law of evidence of the particular state, the presentation of such evidence is no guarantee of success. Success depends on the strength of the actual case, the attitudes of the judges, and the effectiveness of the presentation of the case.

OUTLINE OF EVIDENCE ADMISSIBILITY ISSUES

I. Relevance

Information provided to the court must be relevant to the case.

A. Determining the Legal Issues

The evidence must demonstrate parental incapacity or unfitness as these are defined by state statutes and case law.

B. Allegations in the Petition

The evidence must establish the truth of the allegations in the petition.

C. Trivial and Unpersuasive Evidence

The evidence must be of sufficient weight and importance that it is worth the court's consideration.

II. Reliability

The evidence must not be of a type generally considered unreliable, i.e., hearsay and opinion.

A. Hearsay

Hearsay is second hand information used to prove the truth of what was said. (If it is being used for some other reason, it is not hearsay and is admissible.)

Sometimes hearsay is admissible anyway, as in the following exceptions:

1. Admission of a Party

Statements made out of court by those whom the statute considers a party to the hearing (the parents, the state) can be repeated by the witness and are admissible.

2. Excited Utterances

The witness can repeat "excited utterances" made by someone else, who need not be in the courtroom to testify.

3. Regularly Kept Records

Entries in business records, official (government agency) records, and official documents (e.g., birth certificates) are admissible. The maker of the entry need not be in the courtroom.

B. Opinion

Opinions may be given only by those who qualify as expert witnesses.

III. Protected Relationships

The confidentiality of communication in certain protected relationships (doctor-patient, husband-wife) cannot be breached, and, within the limits of the state statute, is inadmissible.

EXERCISE: HEARSAY

State whether or not each of the following statements would be hearsay, if made by a caseworker on the stand in a termination of parental rights hearing. If it is, state under what circumstances, if any, the statement might be admissible anyway. The parents, Mr. and Mrs. Clark, are both in the courtroom. The child is named Bobby.

1. "The school counselor told me that Bobby was a real problem at school because of his hyperactivity."

   Hearsay? yes___ no___ Admissible? yes___ no___

2. "The last time I saw Mr. Clark, he said that although he understood that Bobby needed a full-time father, he went anyway to Mexico with his motorcycle group on a two-month trip."

   Hearsay? yes___ no___ Admissible? yes___ no___

3. "Mrs. Clark kept 3 of the 12 visits scheduled for her with Bobby from May through July, 1976."

   Hearsay? yes___ no___ Admissible? yes___ no___

4. "I have been a caseworker with the agency since July, 1977, and I have been the caseworker for the Clark family since August, 1977."

   Hearsay? yes___ no___ Admissible? yes___ no___

5. "Mrs. Fluscoff, the neighbor, told me that she saw the Clark's leave Bobby alone all night on two occasions."

   Hearsay? yes___ no___ Admissible? yes___ no___

6. "Mrs. Clark missed her three appointments to the mental health clinic."

   Hearsay? yes___ no___ Admissible? yes ___ no___

7. "According to the Clark's previous landlord, the Clark household was unliveable."

   Hearsay? yes___ no___ Admissible? yes___ no___

8. "The case file notes made by Mrs. Vogel, the earlier caseworker, indicate that when Mrs. Vogel went to the Clark home on August 14, 1974, Bobby had welts all over his back."

Hearsay? yes___ no___ Admissible? yes___ no___

Answers

1. This statement is hearsay, and will be admitted only if the parent's attorney fails to object. The school counselor would have to appear in person and testify about specific incidences in which Bobby's behavior was a problem.

2. This statement is hearsay, but it is admissible anyway as an admission of a party, since Mr. Clark, Bobby's father, is a party in the termination proceeding.

3. This statement is not hearsay if it is based on the caseworker's personal observations. That is, if the caseworker was there at the visits and personally observed that Mrs. Clark missed them, the statement is first hand, not hearsay. But if the caseworker's statement was based, for example, on information given by someone else who was scheduled to be present at the visit, that would be hearsay. It would be necessary to have that person present in the courtroom to testify.

4. This is not hearsay as it asserts personal knowledge.

5. This statement, like statement 1, is hearsay and is not admissible. It would be necessary to have Mrs. Fluscoff present to testify at the hearing.

6. This testimony is probably hearsay and not admissible, unless the caseworker personally observed that Mrs. Clark missed her appointments. Someone from the mental health clinic would have to testify to the missed appointments unless the opposing attorney would agree to stipulate to that as a fact.

7. This statement is hearsay and inadmissible. Again, the landlord would have to be present at the hearing and would be expected to testify specifically about the condition of the apartment.

8. This statement is hearsay and its admissibility depends upon the rule in your state concerning official records. Since the notes made by the earlier caseworker were based on her personal observation they would be admissible as official records under the laws of many states.

SAMPLE EVIDENCE CHART OF THE HOOVER CASE

In preparing a case for court, it is often helpful to make a guide which lists the facts that will establish your case, and the evidence that will prove each of the facts in court. Of course, the final decisions on how to manage the case will be made by the district attorney in consultation with you. You, however, will be responsible for sifting through your case to find the facts that demonstrate parental incapacity and otherwise support your case.

The sample guide which follows is based on the Hoover case, and might have been made by the caseworker at the time she first presented to the district attorney her plan for pursuing termination of parental rights. The guide concerns only Mrs. Hoover; a separate guide could be done for Mr. Hoover, showing his failure to visit the children, pay support, prepare a home for the children, or maintain contact with the agency.

Evidence Chart

Mrs. Hoover

Facts to be Proved	Items of Evidence
1. Inadequate care while in custody of mother	
Repeated abandonment of children	Testimony of mother's neighbors and friends
	Testimony of investigating caseworker and case file
	Transcript of first hearing (conclusions by judge) (admissions by mother)
Physical condition of children, i.e., rashes, burns, inadequate clothing	Testimony of observing doctor and medical records (authenticated by witness who is record-keeper)
	Caseworker testimony or case file
	Transcript of first hearing (as above)
Condition of home	Testimony of public health nurse or records
	Testimony of former landlord
	Caseworker testimony or case file
	Transcript of first hearing (as above)
2. Child welfare agency planning for return of children	Visitation schedule
	Copies of letters to client

Facts to be Proved	Items of Evidence
	Written agreement between child welfare agency and mother
	Case File
	Testimony of caseworkers
	Copies of letters to referral sources
3. Failure of mother to prepare for return of child	
Non-cooperation with services	Case file
	Caseworker testimony (observations and admissions by mother)
	Vocational rehabilitation counselor testimony
	Reports from Alcohol Rehabilitation Center
Lack of visitation	Case file and caseworker testimony
Frequent moves	Caseworker testimony and case file
	Testimony of sister
Lack of contacts with caseworkers	Case file and caseworker testimony
4. Relationship between mother and children - evaluation	Foster parents' testimony (observations)
	Caseworker testimony (opinion, observations)
	Testimony from psychologist who evaluated mother and children

Facts to be Proved	Items of Evidence
5. Emotional and physical state of children and need for stability and permanent placement	
Emotional needs	Psychologist's testimony
Medical needs	Medical reports on Phillip and Sharon
	Doctor's testimony on medical needs and supervision required for two children
6. Good, permanent homes will be available for children	
The children are adoptable	Adoption worker or caseworker having specific experience placing similar children
The foster parent will adopt	Testimony by foster parent or stipulation of counsel

Discussion of the Evidence Chart

1. Inadequate Care while in Custody of Mother

If the judge made formal findings of fact at the first hearing, they may be found in the legal file. A transcript of the first hearing may also be available. Information regarding the physical state of the children may be provided by medical testimony or records. The case file may contain notes on the state of the house, or, better yet, the caseworker may be available to testify on that point. There may be testimony from the public health nurse's inspection. Neighbors and friends may testify regarding the pattern of leaving the children unsupervised as well as regarding the inadequate care and the drinking binges.

2. Child Welfare Agency Planning for Return of Child

Instructions made by the court may appear in the legal file - or it may be necessary to obtain a transcript.

Plans set up by the worker and suggestions made to the mother should be reflected in the case file, and, where the worker making the plan is still locatable, should be testified to directly. Letters to the mother outlining expectations of her may be particularly useful. Even more useful is a written agreement, if any, between the mother and the worker.

The caseworker can testify to the actual availability of the resources offered to the mother, and can explain the reasons behind the plan. If a prior worker was involved, it will be necessary to call on her for an explanation of why the plan evolved as it did.

3. Failure of Mother to Prepare for Return of Child

There are a number of sub-issues, and each will require a different kind of proof.

The lack of visits may be shown by the testimony of the foster parents, as well as the case file (if admissible into evidence) and testimony of the caseworker. Hopefully, precise records of visits will have been kept.

Lack of cooperation with services may be shown by the caseworker having written down and now testifying that the mother made statement such as "I just didn't get around to it." Any comments by the mother regarding why she failed may be useful as evidence if carefully noted by the caseworker.

Records of other agencies in the community could be obtained, indicating that the mother had never used their services, but that could involve an unnecessary expenditure of time and energy. At minimum, the caseworker should have carefully recorded efforts to arrange for referrals for services and their success or failure. The failure of the mother to avail herself of them should not be a seriously disputed issue.

Frequent moves by the mother can be documented from Mrs. Hoover's statements to the caseworker. Ms. Minnis may be able to testify that she has personally observed the mother living at a number of residences, or that mail sent to the mother was returned. Neighbors may testify that the mother moved at a given time -- but it is too much trouble to bring them in just for that reason.

The mother may have admitted that she has lived in housing where children were not permitted -- or it may be necessary to call in former landlords to testify. As to residences out of state, depositions (out of state questionning) could be arranged to record the testimony of persons familiar with her actual residences. But that is probably too expensive. The caseworker should be prepared to testify that she offered help or referrals to help the mother find alternative housing, but that the mother did not seek the help. The caseworker can testify to their problems locating Mrs. Hoover.

Court records may be used to show that the mother was convicted of a crime involving drinking.

The caseworker may refer to the file to show the lack of contacts by the mother to the caseworker -- assuming those contacts actually made were faithfully recorded, along with documentation of the caseworker's efforts to schedule contacts. The caseworker may be able to testify on that point from memory. The caseworker can testify that she explained to the mother the need to keep in contact.

4. Relationship between Mother and Children - Evaluation

Observation of parent-child interaction during visits may be testified to by the foster parent or Ms. Minnis. She can also testify about the quality of the interactions. The foster parents and, perhaps, the caseworker, can testify about how the children speak of their mother. The caseworker can testify about how the mother has discussed and described the children. Similar information may come from neighbors, counselors, and relatives. The psychologist who interviewed Barbara might be called to testify about her relationship with her mother.

5. Children's Emotional and Physical Health, Need for Stability, and a Permanent Placement.

A psychologist who has interviewed the children for the purposes of evaluation should be called to testify. Reference can be made to learned treatises but the testimony should emphasize the interview and evaluation of the particular children involved in the case.

6. A Permanent Plan is Available for the Children

If the children are adoptable, an adoption worker or caseworker with specific experience placing or referring very similar children may so testify.

If foster parents wish to adopt, they may be called upon to testify. In many jurisdictions you will want to avoid the appearance of making a comparison between the parents and foster parents. The other attorney may stipulate (agree) that the foster parents are willing to adopt or you may call the foster parents but keep questions carefully focused.

GENERAL GUIDELINES FOR EVIDENCE CHARTS

A separate evidence chart, giving facts to be proved and evidence for each fact, should be made for each case. The following list gives general areas of proof that may need to be considered for desertion and condition cases. Use the sample chart on Mrs. Hoover as a guide for evidence charts on conduct cases. Remember that the specific grounds for termination of parental rights in your state will be set out in your state statutes and that grounds can be combined (e.g., conduct and desertion) in any one case. Refer to Permanent Planning for Children in Foster Care: A Handbook for Social Workers, pages 88 through 97, and to Module 1.1 Overview, for more information on the grounds for termination and evidence needed.

Information that May be Needed to Establish an Absence Case

- Evidence that the parent has been absent, or has had only incidental contacts with the child, for the period of time necessary in your state to establish a desertion case. This information is usually found in child welfare agency records, or in testimony by friends, neighbors, foster parents, and others.
- A chronological record of all search activities, if the parent's whereabouts is unknown. To obtain this, you will need to conduct an exhaustive, formal search for the parent.
- If the parent has been found as a result of the search, be prepared to show why termination is a better plan for the child than restoration.

Information that May be Needed to Establish a Condition Case

- Diagnosis of the condition by one or more physicians, psychiatrists, or psychologists. Diagnosis by an expert is usually considered legal evidence that the parent actually has the condition. If the parent refuses to submit to an examination, consult with legal persons about requesting the judge to order an examination.
- Prognosis of the condition by one or more physicians, psychiatrists, or psychologists that the condition is unlikely to change during the time that the child needs the parent to be a parent.
- Evidence of Incapacity, to establish that the condition so incapacitates the parent that he cannot care for the child. Possible sources of such

evidence are child welfare agency records, and observations of street clinic workers, homemakers, neighbors, caseworkers, and others, who can testify that specific behavior, detrimental to the child, occurred at a specific time and place.

LIST OF POSSIBLE WITNESSES AND DOCUMENTS

The following lists are not exhaustive, but are presented here as a sample of the kinds of people and documents that may be included as "items of evidence."

Witnesses

- Psychiatrists
- Social Workers
- Psychologists
- Homemakers
- Aides
- Home Health Aides
- Public Health Nurses
- County Sanitarians
- Fire Marshalls
- Police
- Court Workers
- Vocational Rehabilitation Counselors
- Physicians
- Relatives
- Parole Officers
- Neighbors
- Friends
- Landlords
- Employers
- Alcohol Counselors
- Parenting Class Teacher
- Family Counselors
- Mental Health Workers

Documents

- Birth Certificates
- Death Certificates
- Marriage Certificates
- Hospital Records
- Divorce Decrees
- Criminal Records
- Medical Records
- Agency Care Record
- Photograph of Child
- Child Support Orders
- Testimony and Orders from Previous Juvenile Court Hearings
- Paternity Proceedings

EXERCISE: PREPARING AN EVIDENCE CHART

Using a case that appears headed for termination of parental right, complete an evidence chart on one or both parents. Use the statutory grounds for termination of parental rights in your state as a guide, and refer also to the sample chart on Mrs. Hoover and the general guidelines given in this module to help you. Start by listing the major points to be proved, and then adding minor points as necessary. Finally, list the items of evidence that you know of that could be used to prove each of the facts. In considering the evidence, keep in mind the admissibility issues raised in the article at the beginning of this module.

Evidence Chart for Termination of Parental Rights

(name of case)

Facts to be Proved	Items of Evidence
1.	
2.	
3.	

Facts to be Proved	Items of Evidence
4.	
5.	
6.	

TEACHING RESOURCES:

In this module:

- Chart: "Stages in a Termination of Parental Rights Hearing"
- Article: "The Social Worker as a Courtroom Witness: Cruel and Unusual Punishment," by Frank Mussell.
- Article: "The Expert Witness," by Frank Mussell.
- Article: "What to Expect During Cross Examination," by Mark Hardin and Susan Downs.
- Ideas for Group Discussion on Testifying

Other Resources:

Maria Larson, J.D., et al. The Social Worker as Witness: Videotape and Manual. Region VI Resource Center on Child Abuse and Neglect. University of Texas School of Law and Center for Social Work Research, School of Social Work, The University of Texas at Austin, 1977.

Bill Mooney, Direct Examination: A Videotape. University of Iowa, 1978.

Victor Pike, et al. "Witnesses," Section 5.7 in Permanent Planning for Children in Foster Care: A Handbook for Social Workers, Regional Research Institute for Human Services, Portland State University, Portland, Oregon, 1977.

Guest speaker: a lawyer who has had experience in adjudicatory hearings in juvenile court.

GENERAL LEARNING OBJECTIVES:

The materials in this module are designed to help prepare students to:

- understand the procedure of a termination of parental rights hearing and the place of direct and cross examination in it;
- gain confidence in their ability to perform as a witness.

TEACHING STRATEGIES:

The chart showing stages of a termination hearing can be used as an overhead transparency; in addition, caseworkers who expect to go to court may want copies of their own to keep. The chart can be the basis for a presentation from a lawyer or judge on court procedures in the students' own jurisdiction. With slight modifications, the chart can be used also to illustrate other kinds of adjudicatory (fact-finding) hearings, since all civil trials heard without a jury have the same basic procedures. The chart might be particularly useful in training workers to testify at hearings on issues of abuse and neglect, for example. Students watching films of civil trials or actually attending them may want to try to identify the different stages as they appear, and compare their observations of how the trial proceeded with the procedures suggested on the chart.

The two articles by Frank Mussell summarize major points for witnesses to keep in mind while testifying. The Tips for Testifying sections, p. 2.5.8 and p.2.5.11 can be used as a basis for the evaluation and group discussion of a witness's performance that the students observe either on film or as observers in a courtroom. The material in these articles will be of most immediate interest to workers in the weeks preceding their appearance in court. For this reason, they might find copies useful, which they can refer to as the occasion arises. They can also use the material to help prepare other witnesses on the case, since caseworkers often have the duty of finding witnesses and helping them prepare their testimony.

The material in the last article, on cross examination, gives a good basic discussion of the lines the parent's attorney can be expected to take during cross examination. Caseworkers should find this discussion fortifying; forewarned is forearmed. It could be used by a lawyer speaking to the class to help him prepare and organize his presentation. Other tactics may be added to the list, and the presentation would be made more vivid by personal anecdotes of courtroom experiences during cross examination.

The discussion questions at the end of the module give some specific ideas for using this material in a classroom. However, the best way to learn the art of testifying is by doing it, and by watching others do it. Participating in mock trials, observing videotapes, and watching actual hearings in session will prepare students better than any amount of reading on how to behave on the stand, and should be undertaken in addition to reading the material in this module.

FURTHER READING:

Barton E. Bernstein, "The Social Worker as a Courtroom Witness," Social Casework, November, 1975.

Barton E. Bernstein, "The Social Worker as an Expert Witness," Social Casework, July, 1977.

Anne Strick, "Requiem for the Adversary System," Juris Doctor, February, 1977.

CHART: STAGES IN A TERMINATION OF PARENTAL RIGHTS HEARING

by Frank Mussell, J.D.

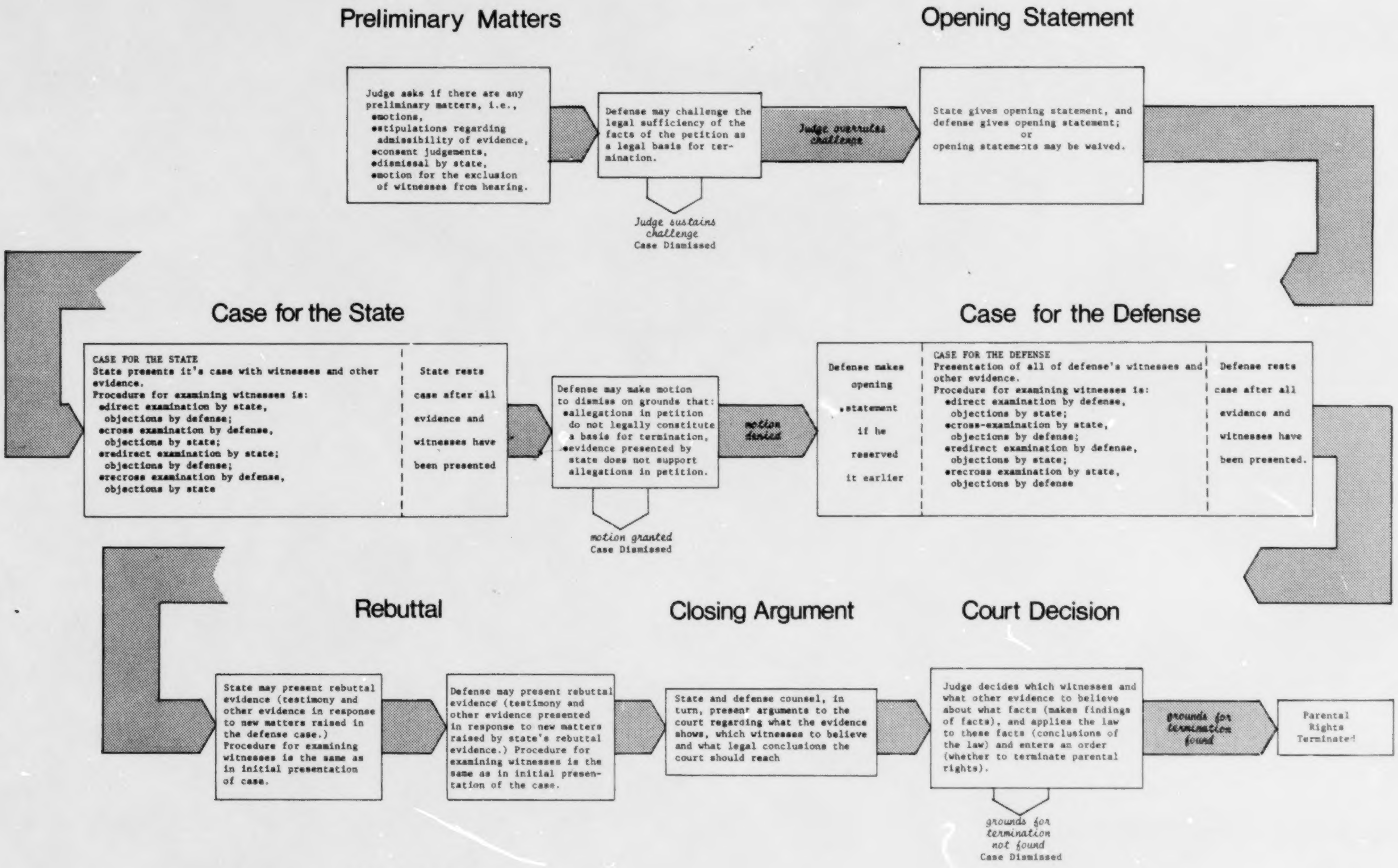
The following chart shows the phases of a termination of parental rights hearing at their normal sequence. A termination of parental rights hearing is a type of civil trial, and even if it takes place in juvenile court, the importance of the decision to be made mandates a more formal procedure than is often found in hearings on juveniles. Thus the parents become the "defense," and the state the "plaintiff," in contrast to other juvenile court procedures which seek to minimize adversary positions. We are indebted to Frank Mussell, for the original version of this chart, which we have modified somewhat for training purposes.

Termination Hearings

A lawyer remarks. . .

The principal concern of the hearing is to reach a disposition that is in the best interests of the child, but these cases, when they are contested, may not be dispassionate inquiries as to what that interest is. The parents will typically be represented by an attorney who will do his best to disprove the allegations of the petition, discredit witnesses, including you, and otherwise persuade the court that the parental rights of his clients should be preserved. The district attorney will be trying to accomplish the exact opposite of what the parents' attorney is trying to accomplish. The child's attorney (if there is one) may side with one or the other or neither of the other attorneys in a given issue. It is not uncommon for the hearing to last two or three days, with all the trappings of a full-blown civil trial. (From Pike, Handbook for Social Workers.)

STAGES IN A TERMINATION OF PARENTAL RIGHTS HEARING*



Preliminary Matters

Judge asks if there are any preliminary matters, i.e.,
- motions,
- stipulations regarding admissibility of evidence,
- consent judgements,
- dismissal by state,
- motion for the exclusion of witnesses from hearing.

Defense may challenge the legal sufficiency of the facts of the petition as a legal basis for termination.

Judge sustains challenge
Case Dismissed

Judge overrules challenge

Opening Statement

State gives opening statement, and defense gives opening statement;
or
opening statements may be waived.

Case for the State

CASE FOR THE STATE
State presents it's case with witnesses and other evidence.
Procedure for examining witnesses is:
- direct examination by state, objections by defense;
- cross examination by defense, objections by state;
- redirect examination by state; objections by defense;
- recross examination by defense, objections by state

State rests case after all evidence and witnesses have been presented

Defense may make motion to dismiss on grounds that:
- allegations in petition do not legally constitute a basis for termination,
- evidence presented by state does not support allegations in petition.

motion granted
Case Dismissed

motion denied

Case for the Defense

Defense makes opening statement if he reserved it earlier

CASE FOR THE DEFENSE
Presentation of all of defense's witnesses and other evidence.
Procedure for examining witnesses is:
- direct examination by defense, objections by state;
- cross-examination by state, objections by defense;
- redirect examination by defense, objections by state;
- recross examination by state, objections by defense

Defense rests case after all evidence and witnesses have been presented.

Rebuttal

State may present rebuttal evidence (testimony and other evidence in response to new matters raised in the defense case.) Procedure for examining witnesses is the same as in initial presentation of case.

Defense may present rebuttal evidence (testimony and other evidence presented in response to new matters raised by state's rebuttal evidence.) Procedure for examining witnesses is the same as in initial presentation of the case.

Closing Argument

State and defense counsel, in turn, present arguments to the court regarding what the evidence shows, which witnesses to believe and what legal conclusions the court should reach

Court Decision

Judge decides which witnesses and what other evidence to believe about what facts (makes findings of facts), and applies the law to these facts (conclusions of the law) and enters an order (whether to terminate parental rights).

grounds for termination not found
Case Dismissed

grounds for termination found

Parental Rights Terminated

*without a jury

THE SOCIAL WORKER AS A COURTROOM WITNESS: CRUEL AND UNUSUAL PUNISHMENT

by Frank Mussell, J.D.

A child-protective services worker assumes a variety of roles in the course of his involvement in cases of child abuse or neglect. Perhaps the role which evokes the greatest discomfort for the worker and the one for which he is least prepared is the role of being a witness in a contested fact-finding hearing (trial) in juvenile court. Caseworkers can enhance their performance in the courtroom and minimize their anxiety by devoting some time to pre-hearing preparation and to improving their techniques of testifying.

Pre-Hearing Preparation

1. Prior to the hearing visit the courtroom, familiarize yourself with its physical arrangement, determine whether the various participants will be seated, and learn any local methods of procedure.

2. Review your case record and notes to refresh your memory and to organize your testimony in a coherent manner. A chronological format is preferable. Although you will be expected to testify from memory don't memorize your testimony since it will lack spontaneity and impair your credibility. Make sparing references to your case record and notes during your testimony since this interrupts the flow of your testimony and gives the impression you are neither competent nor prepared.

3. Examine your proposed testimony for any flaws it may contain in the form of apparent omissions, inconsistency, bias, or prejudice. Develop responses for questions which may be expected on cross examination of your testimony.

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Tips for Testifying

1. Tell the truth. Exaggeration and speculation may be easily exploded and your credibility will suffer dramatically .

2. Your appearance and demeanor as a witness are critically important. You should be neat, clean, and appropriately dressed to reflect the solemnity of the courtroom setting. Under no circumstances should you chew gum or smoke in the courtroom. Upon entering the courtroom you should appear pleasant, sincere, dignified, interested, attentive, and courteous. This attitude should be maintained throughout your testimony. Upon taking the witness stand you should be prepared to take the oath and be seated. Don't slouch in the witness chair.

3. When testifying speak slowly, loudly, and clearly. If your testimony is not heard and understood it is worthless.

4. Avoid the use of social work jargon. Much of the language used by social workers which has special meaning within the profession is incomprehensible to judges and lawyers.

5. Listen carefully to the questions that are asked. If you don't understand the question, request that it be repeated, rephrased, or explained.

6. Be responsive to the specific question asked and answer it directly. If the question cannot be answered without explanation say so. If the question contains several parts then answer it in several parts.

7. If you do not know the answer to a question don't hesitate to say so.

8. Testify positively without prefacing each answer by saying "It seems to me. . ." or "I believe. . ." These responses will elicit objections from the opposing attorneys which breaks up your testimony. They also make you appear uncertain about your testimony.

9. Never argue with an attorney from the witness stand, never respond with "cute" or "witty" comments, and never give a "tricky" answer to a question. Your credibility will suffer if you do.

10. Maintain your composure regardless of what happens in the courtroom or how badly you are vilified by an attorney. Judges are familiar with the histrionics of lawyers and are rarely persuaded by them.

11. If an objection is made by one of the lawyers during the course of your testimony stop speaking immediately. If the judge overrules the objection, you are permitted to answer the question. If the objection is sustained by the judge, you are not permitted to answer the question, and a new question will have to be asked.

12. Again, tell the truth. With adequate preparation and practice a child-protective-services worker should have no fear of appearing in a court as a witness.

THE EXPERT WITNESS

by Frank Mussell, J.D.

As child protection proceedings have become more technical, increased emphasis has been placed upon the work of "experts" in the field of psychiatry, psychology, radiology, pediatrics, neonatology, opthomology, and a host of other fields and specialities. Much less attention has been given to the preparation of members of these professions for entry into the arena of the courtroom.

The results, too often, have been disastrous. Hostility toward the legal profession is generated, and, of far more importance, the professional develops an aversion to becoming involved with the diagnosis or treatment of abused or neglected children for fear of becoming entangled in the legal process. The following discussion of the expert witness is designed to ease their burden.

Definition

A layman is permitted to testify in court if he has firsthand knowledge of the situation or transaction about which he is testifying. His testimony is restricted to the relation of his observations, and he is usually not permitted to offer his opinions. The expert witness, on the other hand, is permitted to offer his opinion on the matters at issue before the court. In order to testify as an expert witness, four conditions must be met:

1. The person must be qualified through experience or training to formulate an expert opinion.

2. The subject matter of the testimony must be appropriate for the application of expertise. That is, it must be of sufficient complexity and so related to some science, business, profession, or occupation as to be beyond the knowledge or understanding of laymen.

3. It must be shown that the state of the art or scientific knowledge in the field is sufficiently advanced to permit a reasonable opinion to be formulated even by an expert. The expert will not be permitted to guess or speculate, but will be restricted to offering opinions held with a reasonable degree of certainty.

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4. There must be sufficient facts entered into evidence to support an expert's opinion.

Procedure to Qualify the Expert

The attorney who is the proponent of the expert has the obligation to fulfill the four conditions set forth above. He must establish through questions of his witness that he has the requisite training and experience to qualify as an expert in his field. He also has the burden to satisfy the other three conditions. Typically, however, issues related to the subject matter and the state of the art are not contested.

At the conclusion of the proponent's "qualifying" questions, the opposing attorney is generally given an opportunity to cross examine the witness. Questions asked of the expert on cross examination may cover any of the four areas mentioned above, but usually are focused on testing the expert's qualifications.

It is the responsibility of the judge to decide whether or not the witness is qualified to testify as an expert. It should also be noted that the judge is not bound by the opinions of the expert, even though that same judge found the witness qualified to offer an expert opinion. In short, the judge may disregard all or part of the expert's opinions in deciding the case.

The Factual Basis for the Expert's Opinion

Obviously, the expert must have facts in his possession before he can formulate an opinion. These facts from which the expert draws his inferences may be obtained in three ways. First, the expert may have obtained facts through his own firsthand knowledge by examination or evaluation. In this respect, he functions as a lay witness in testifying to the facts known to him and as an expert witness when he offers an opinion based on these same facts.

The second method of supplying facts to the expert witness is to include them in the body of the question which calls for his expert opinion. This is termed the hypothetical question, and it asks the expert to assume the existence of a series of facts and further asks his expert opinion on the basis of these assumed facts. It is the duty of the proponent of the expert witness to assure that each of the facts he has asked the expert to assume are subsequently established through the testimony of other witnesses. Failure to establish these assumed facts through other witnesses, constitutes a failure to satisfy condition number four above and will result in the expert's opinion being stricken from the record.

The third method of presenting facts to an expert as a basis for his opinion, is to have him observe the testimony of other witnesses. Upon questioning, he is asked to assume that certain portions of the observed testimony are true and to offer an opinion based thereon.

Once the judge has found the witness qualified to testify as an expert witness, the proponent of the expert will question him regarding his opinions. At the conclusion of the direct testimony, the opposing attorney will be permitted to ask questions of the expert on cross examination.

Practice Tips for the Expert Witness

1. Prepare a resume containing your qualifications which may be offered into evidence. This will shorten the time necessary to qualify you and will insure that you do not omit any significant part of your education or experience.

2. Avoid the excessive use of professional jargon. When it is necessary to use technical terms in your testimony, follow their use with a definition in layman's language. If your testimony contains numerous technical terms, prepare a list of them with their correct spelling and provide the list to the court reporter. If the reporter doesn't recognize the words you employ, his transcript of the hearing will be inaccurate and an appeal will be more difficult.

3. Even as an expert, you are only expected to hold your opinions with a reasonable degree of certainty. You are not expected to be absolutely certain. In fact, in most instances when an expert claims absolute certainty, he appears rigid, dogmatic, and unworthy of belief. On the other hand, you will not be permitted to offer an opinion that is simply a guess or mere speculation. Therefore, avoid the use of terms such as "hunch," "guess," "impression," and "speculation." In their stead use terms such as "diagnosis," "judgment," "evaluation," "assessment," and "prediction."

4. If more than one expert inference may be drawn from a particular set of facts, it is important for you to have considered the alternatives and to clearly explain why the chosen inference is preferable to the others. On cross examination, you are likely to be asked if other opinions or inferences are possible. Since nearly anything is possible, it is useful to concede the possibility, where appropriate, and explain why the opinion you hold is more probable or preferable.

5. Be prepared to respond to typical questions on cross examination. Areas for cross examination may include the length of time and thoroughness of your evaluation or examination, the identity of the person who retained your services, the compensation you are receiving for your services, any previous occasions when the same person engaged your services, the negotiations for your services and any expectations expressed by the person who engaged you, and any other matters related to your credibility.

The series of questions that follows is representative, although not exhaustive, of the kinds of questions you may be asked as an expert witness.

Qualifying the Expert Witness

Q. "Please tell the court your name and your occupation or profession."

Q. "Where are you presently engaged in the practice of (your profession)?"

Q. "Where do you maintain your offices?"

Q. "Are you licensed to practice (profession) in this state?"

Q. "When did you receive your license to practice (profession)?"

Q. "What professional degrees have you been awarded?"

Q. "When were these degrees received and from what schools were they received?"

Q. "Following your graduation from (name of school most recently graduated from) have you received any additional professional training?"

Q. "Please tell the court when this training was received, the nature of the training, its duration, and the place of the training?"

Q. "Are you a member of any (professional) associations or societies?"

Q. "Have you ever taught or written any professional articles?"

Q. "Following your graduation from (name of school most recently graduated from), where have you engaged in the practice of (profession) and for what periods of time?"

Q. "During this time, how many (evaluations have you performed/children have you treated) in the practice of (profession)?"

Q. "Have you ever been qualified as an expert before? In what capacity?"

Q. "When and before what court?"

Attorney: "Your honor, at this time I would proffer Dr. (name) as an expert in the field of (profession/speciality/sub-speciality)."

WHAT TO EXPECT DURING CROSS EXAMINATION[1]

by Mark Hardin and Susan Downs
Permanent Planning Project

Social workers in court hearings often feel like sitting ducks; not only do they need to keep their wits together to testify to all persuasive evidence they know during direct examination, but also they can expect attempts from the defense attorney to discredit them by an onslaught of insinuating questions during cross examination.

The best antidote to stage fright in the witness box is confidence -- confidence in the preparation done for the hearing, and confidence in your professional judgment and abilities. One way to weather cross examination is to keep in mind that of all the actors in the courtroom, you probably know the most about the issues to be decided and have the interests of the child most clearly in mind. Caseworkers have a contribution of enormous importance to make to the issue at hand, and need not be intimidated by the expertise and assurance of the attorneys in the room.

> "It is unfortunate that so many professionals responsible for the welfare of children believe the legal system is inflexible. They are quick to point out that 'the law says. . .,' 'that judge has never. . .,' 'this court doesn't. . .' and assume that knowledge of these apparent obstacles exempts them from further efforts to meet their responsibility. The key to the ability to aggressively defend an appropriate placement decision is the realization that adoption law is a complex mixture of broadly defined procedures, poorly detailed intentions, and all too often uninformed interpretations. Although it is true that some parts of the adoption law are more flexible than others, even those portions which could have been legitimately interpreted to more greatly benefit children have often been ignored by adoption workers. This has occurred either because workers lack the initiative, the interest, or the tenacity to prepare well and then fight for what they believe in, or they have not developed the competence to challenge the attitudes and philosophies underlying inappropriate legal practices and inter-

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[1] We are indebted to Maria Larson and her colleagues for many of the ideas and some of the text of this paper. All direct quotes and paraphrases from Larson's work are cited in the text. See reference list with this module for bibliographical information.

> pretations. Similarly, they do not realize that their personal efforts, supported by logic, knowledge of the law, and placement practice alternatives, could produce desirable changes in a judge's attitude and specific action beneficial to children."[2]

During cross examination the defense attorney will try to weaken the effect of your testimony by challenging your competency and the way you handled the case. Particularly if the casework was thorough and the evidence of parental inadequacy strong, the parent's attorney will try to draw attention away from the evidence and toward the caseworker, challenging the decisions and plans made by the agency.

> "Cross-examination affords an attorney an opportunity to weaken, undercut, or disprove the direct testimony of an adverse witness. It is seldom the dramatic confrontation pictured on television or in the movies; the forced confession of wrongdoing by the witness so useful to Perry Mason, almost never happens. People rarely can be forced to say what they do not wish to say. Nonetheless, the game-playing aspects of trial law do reach their heights during cross-examination. . . Careful preparation and a cool head is the best defense." (Larson, p. 27)

In termination of parental rights hearings, the burden of proof lies with the state to demonstrate parental incapacity. For this reason,

> "The attorney may emphasize the *right of parents to the care, custody, and control of their children* free of state interference. This right, long a part of the common law, has been constitutionally recognized in a wide variety of contexts on various grounds. The United States Supreme Court has long recognized that freedom of personal choice in matters of family life is one of the liberties protected by the Constitution, and that a private realm of family life exists which the state cannot enter.[3] The state may intervene into the parent-child relationship, of course,

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[2] Christopher Unger, Gladys Dwarshuis, Elizabeth Johnson, *Chaos, Madness, and Unpredictability: Placing the Child with Ears Like Uncle Harry's*, Spaulding for Children, Chelsea, Michigan, 1977, p. 287.

[3] *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944). Family life has received constitutional protection in a wide variety of contexts: substantive protection, e.g., *Moore v. City of East Cleveland*, 97 S. Ct. 1932 (1977) (plurality opinion); *Roe v. Wade*, 410 U.S. 152 (1973); *Wisconsin v. Yoder*, 406 (U.S. 205, 231-244 (1972); *Griswold v. Connecticut*, 381 U.S. 479 (1965); *Pierce v. Society of Sisters*, 268 U.S. 510, 534-535 (1925); *Meyer v. Nebraska*, 262 U.S. 645, 651 (1972); *Cleveland Board of Education v. LaFleur*, 414 U.S. 632 (1974); *Armstrong v. Manzo*, 380 U.S. 545 (1965); *May v. Anderson*, 345 U.S. 528 (1943).

> but the state must overcome a strong presumption favoring the parents.
>
> It is cardinal with us that the custody, care, and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder.[4] In short, the state bears a heavy burden of proof to justify intervention." (Larson, p. 28)

The following pages describe the usual gambits to be expected from the parent's attorney during cross examination, with sample questions the attorney might ask the worker to discredit the state's case.

1. Caseworker's Bias

The defense may try to show that you have sought termination of the parent's rights partly out of bias or hostility to the parent, that you or the agency have an inherent bias against parents of children in foster care and "are out to get them." The attorney may search the caseworker's file for material that appears to support this view.

ATTORNEY: Please turn to the July 21, 1976 log from your file and read the third paragraph from your entry marked "intake notes."

WORKER: "Ms. Peterson presents herself as an unkempt and abrasive individual. She did not look me straight in the eye as I talked to her. She appears to be a troubled and unhappy person, having difficulty coping with the everyday problems of life."

ATTORNEY: Now, Mr. Simon, you testified that the intake interview lasted thirty minutes and was the first time you met Ms. Peterson? Your notes seem to indicate that you disliked her and judged her, all within that first short meeting - isn't that right? Are you qualified to make psychological evaluations?

The worker's notes in the quotation do seem judgmental and somewhat arbitrary, considering it is the first, short interview. The remark that the mother didn't look him straight in the eye, however, is precise, and based on the actual observation. That type of observation is always appropriate.

The worker might reply, "I honestly stated my first impression of Ms. Peterson, but I certainly didn't close my mind or give up on her."

The attorney may try to convince the court that your agency has a program or policy which leads workers to overzealously try to work for termination of parental rights.

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[4] Prince v. Massachusetts, 321 U.S. 158, 166 (1944).

ATTORNEY: I understand that it has become a major policy of your agency to reduce foster care costs by working toward more terminations of parental rights. Your agency has greatly increased the number of cases where terminations of parental rights are sought, hasn't it?

2. Caseworker Competency

The social worker's competency is questioned in several ways. New workers in particular may find themselves vulnerable to the charge of inexperience, and the parent's attorney may imply that the worker's handling of the case was not as expert as it might have been by a more experienced worker. He may suggest that the less experienced worker unintentionally antagonized the client, which created a strained relationship and contributed to the mother's failure to cooperate with the agency. He raises questions about the soundness of the worker's decisions, trying to show that the witness's knowledge of the agency's policies, of child development, and of the dynamics of family interaction is limited.

ATTORNEY: How long have you been a caseworker?

How long have you been the caseworker for this case?

What in your background qualifies you to participate in a decision that the child has suffered emotional neglect?

How do you know that Bobby is behind in his development because of his relationship with his mother?

Especially if you are attempting to qualify as an expert witness, in order to be able to state your opinion on the needs of the child and family relationships, the attorney may carefully question you on your experience, college education, and on-the-job training. (See Mussell, "Cruel and Unusual Punishment," above).

3. Conflict of Interest

It is difficult for lawyers who are accustomed to the adversary system to accept the proposition that a social worker can regard impartially both the interest of the agency and of the client. Obviously a caseworker's role in a termination of parental rights case has changed since the time a plan for reunion of child and parent was being pursued. After a determination that rehabilitating the family is not possible and the child will never be able to return home, the relationship becomes adverse. Often in such a situation contact with the client ceases; indeed, a parent's attorney might insist on this to avoid furnishing further ammunition to the agency. Moreover, the worker may have a natural tendency to overemphasize the parent's failures in order to justify the decision to seek termination of parental rights. The worker's dual and conflicting role may be brought out in cross examination by the defense.

> "It is disturbing that a former 'friend-in-need' has now become an advocate of termination, and that conversations and information obtained in a 'save the family' context are later used to attempt to terminate parental rights. The worker must be able, coolly and dispassionately, to convince the trier of the fact that this change in position occurred only after all other efforts failed. If this is not done, the court may be persuaded to give the parents 'one more chance.'" (Larson, p. 30-31)

The attorney may try to insinuate that you, under the guise of helping the parent, were actually setting her up for termination. For example, the attorney might question your honesty with the parent by pointing out any failure to properly explain the real nature of your role or the consequences of the parent's failure to cooperate.

ATTORNEY: You told Ms. Peterson that she was being sent to the psychologist to help her work for the return of the children, didn't you? But now we have Dr. Willard called by the agency to testify against her - weren't you being dishonest?

You didn't explain to Ms. Peterson at first that you might try to terminate her rights did you? But you were already gathering information for that purpose. You didn't tell her that you were taking down what she said so you could use it against her, did you?

This line of questioning will be less effective insofar as the worker has, from the beginning, been clear in stating the options that will be considered if reunion is not possible, including voluntary surrender (when parent and agency agree on a plan of adoption and work toward that goal together) or court termination proceedings (when parent and agency disagree about the possibility of reunion or the appropriateness of adoption).

4. Inadequate or Inappropriate Services

The defense often argues that the state has not provided adequate services to rehabilitate the family. The management of the case, the rehabilitation plan, the way decisions were made at the agency, may all be challenged during cross examination. The parent's attorney is likely to try to persuade the judge that the expectations you placed on the parents were unreasonable or unnecessary, or were not adequate for the problem.

ATTORNEY: How could you expect Ms. Peterson to get to the counseling sessions when she doesn't have a car?

You referred earlier to Exhibit 11, a signed agreement between yourself and Ms. Peterson? Is it fair to say that it was your idea to enter into the written agreement and that you wrote it up? In fact, you were the one who thought up Ms. Peterson's obligations under the agreement, right? It was your idea, then, for Ms. Peterson to take homemaker classes? But you have never had any indication that Ms. Peterson's homemaking endangered the children, did you? Ms. Peterson's homemaking deficiencies had nothing to do with the removal of the children, right? Is it your position that Ms. Peterson must meet your own personal standards in every respect before she is entitled to the return of her children?

Why would Ms. Peterson need job rehabilitation if you were working for return of her five children? You wouldn't expect her to work when she has got the kids, would you?

One critical aspect of cross examination will concern how visitation was handled. The attorney may try to show that you were partly responsible for undermining the parent-child relationship by unreasonably discouraging visitation.

ATTORNEY: I understand that you did not promote visitation for the first several months of foster care. Didn't that make it a lot harder to return the children to their parents?

The first foster care placement, as I understand it, was in a home twenty miles from Ms. Peterson's residence. Is that correct? You were aware, were you not, that Ms. Peterson doesn't drive? How did you expect her to be able to visit her children? In fact, you were seeking to prevent her from visiting with her children while they were in foster care, weren't you?

Ms. Peterson indicates that she repeatedly told you that she felt she should be permitted to see her daughter more. Is that true?

5. Poor Agency Planning

The attorney may challenge the existence of a viable permanent plan for the child if parental rights are terminated, and try to show that the child will continue to drift in foster care if parental rights are terminated.

> "The defense attorney tried to show that the agency's plan for the children's future will be more damaging to the children's emotional health than if they were returned to the parental home. He tries to turn attention away from a minute examination of the parents' conduct to a more broad-based examination of alternatives. At least in theory, the care to be provided by the state should be demonstrably superior to that which would be provided in the parental home. The parent's attorney will make

a strong effort to convince the judge that considerable emotional damage will be done to the children by permanent separation from their parents and from siblings. (Larson, p. 28)

ATTORNEY: How do you know, from your personal experience, that Bobby won't just continue in foster care, but without a real mother?

Have you ever personally placed or arranged for placement of a child of his (age) (medical condition) (emotional problems)?

How many children of Bobby's age and race do you personally know have been successfully adopted?

Can you guarantee an adoptive home for Bobby?

How many children does your agency have who are free for adoption but have not been placed?

6. Need for Less Drastic Alternative

The attorney may try to show that you have failed to explore some important alternatives to termination.

ATTORNEY: Bobby acts happy when he sees his mother, doesn't he? He says he wants to see his mother. Is it true that the foster mother wants to keep Bobby permanently? Have you explored the possibility of making permanent arrangements with the foster mother and continuing visitation by the mother?

Frequently, the attorney will try to justify the status quo by showing that the parent is finally making improvements and rehabilitation is around the corner. This line of questioning is stronger if services have recently been arranged that the agency failed to provide.

ATTORNEY: You never did arrange psychiatric help for Ms. Peterson, did you? But you are aware now that she's been seeing Dr. Miracle for the last three weeks? How do you know that she can't be rehabilitated through psychiatric help?

The attorney may ask the social worker why the children were not returned to the parental home for a trial placement. He seeks to convince the judge that supportive services in the home will provide an alternative method for the court to monitor child care and development while still maintaining the parent-child relationship (Larson, p. 30). In addition, defense attorneys often argue that the parent will soon be in a position to care adequately for the child. Such an argument may have the effect of minimizing the importance of the state's testimony on the parent's past failures. An argument that the agency is requesting termination of parental rights prematurely and that the parent will soon be able to resume care of the child can be very persuasive.

7. Disregard of Parent's Rights

Another frequent tack in cross examination is that you have disregarded or shown disrespect for the rights of the parents. That may involve failure to notify parents of a hearing:

ATTORNEY: I understand that Ms. Peterson was never served with notice of the original foster care hearing. I understand that you claim that you didn't want to endanger her health. But you were willing to upset her by sending the police to interview her when she was in the hospital, weren't you?

Failure to have provided proper notice of prior hearings or to have made an attorney available to a poor parent can make termination difficult. It is also bad casework. Obviously, if proper notice and the right to an attorney have been provided, you are immune from this line of cross examination. A denial or rights might also involve a failure to advise a parent of her rights or trying to dissuade a parent from exercising her rights.

ATTORNEY: Ms. Peterson indicates that she repeatedly told you that she felt she should be permitted to see her daughter more. Is that true? You have been aware all along that she has the right to seek greater visitation, right? But you never informed her that she had that right, did you?

Discouraging a parent from consulting legal counsel or telling him that challenging the termination is hopeless can hurt your case. Judges tend to be offended by workers who have discouraged parents from exercising their legal rights.

Conclusion

This discussion has not described in detail how the caseworker witness might defend or justify her casework activities in the face of these legal gambits. The best defense against them is, of course, thorough preparation. Many of the most common cross examination questions lose force in the face of sound casework. In using this article, consider how you would disarm each kind of attack - what kinds of information do you need in hand? What implications do these gambits have for casework practice and agency policy?

Personal attacks on the caseworker witness - her age, marital status, problems with her own children - justifiably make caseworkers angry. These kinds of extreme tactics are under fire from the legal profession itself, (Strick) and seem outrageous to outsiders who assume that the purpose of the hearing is to arrive at the best possible plan for the child. But however irrelevant and needlessly antagonizing they seem, personal attacks are part of current courtroom practice. They are not likely to persuade a judge away from terminating parental rights, however, if the casework has been thorough and professional.

Finally, cross examination is only a small part of the hearing. It may loom large to the worker who must undergo it, but its effect need not be great. In spite of courtroom dramatics, cases are usually decided on the basis of the facts as they appear persuasive to the judge.

IDEAS FOR GROUP DISCUSSION ON TESTIFYING

A. Arrange to observe one or more adjudicatory hearings at juvenile court, either in the court or on film. Be prepared to discuss the witnesses' performance in respect to the Tips for Testifying on pages 2.5. 8, and, if an expert witness testified, on page 2.5.11.

B. Arrange for a lawyer with experience in juvenile court hearings to come to class. Ask him to take the role of "proponent of the witness," as described on page 2.5. and to attempt to qualify students in the room as experts, using the questions listed on page 2.5. . Be prepared to take the role of witness, either playing yourself and answering the questions truthfully, or as a psychologist or other professional you know well and may be asking to testify on behalf of one of your clients.

C. How would you as a caseworker testifying as a witness at a termination of parental rights hearing, answer the attorney's questions in the article in cross examination.

D. Using the tactics listed in the cross examination article as a guide, and assuming the role of parent's attorney, prepare questions on any of the cases given in these modules (the Turner/Sears Case, the Hoover Case, or Laura's Case).

E. Consider what implications for agency policy and casework practice these cross examination tactics have. What guidelines do the tactics suggest to caseworkers for dealing with parents? For arranging expert evaluations? For setting out provisions of a service agreement?

GLOSSARY OF LEGAL TERMS:
TERMINATION OF PARENTAL RIGHTS PROCEEDINGS

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Introduction

> "When I use a word," Humpty Dumpty said, "it means just what I choose it to mean -- neither more nor less."
>
> Lewis Carroll, Alice in Wonderland, Chapter 6.

The following glossary of terms commonly used in the juvenile court arena is offered as an aid to understanding termination of parental rights proceedings. Legal terms may have several meanings and occasionally they seem to have no meaning at all. The explanation provided for each term here is not intended to be a definitive statement of its meanings, but is given as a guide to the possible or likely meaning the word has when used by a participant in the juvenile court.

ABANDONMENT - Parental abandonment of a child consists of physically giving up possession of the child coupled with statements or conduct which demonstrate a settled purpose on the part of the parents to forego all parental duties, to give up all parental claims to the child and to permanently sever all relationships with the child.

ADJUDICATION - A judicial proceeding which results in the court pronouncing judgment in the case. It generally is preceded by a hearing where evidence is presented from which the court determines factual disputes and enters a decree.

In juvenile court the truth or falsity of the allegations of the petition are adjudicated. Thus the fact finding hearing or trial is often referred to as the adjudicatory hearing.

ADMISSIBLE - Refers to evidence which is legally qualified to be received and considered by the court in making its determination of the case. The court must decide whether to admit or exclude the evidence from consideration.

ADMISSION - May refer to the formal in-court acknowledgement made by a party directly to the court that the allegations in the petition are true. The party may be said to have admitted the petition, entered an admission to the petition, or pled to the petition.

Admission may refer also to an out-of-court statement made by a party to the litigation in which the party acknowledges the truth of a fact or the happening of an event which is the subject of the litigation. This testimony regarding a party's out-of-court statements is admissible into evidence under the admissions exception to the hearsay rule.

ADVERSARY - A litigant who has taken an opposing position or who contests a proposed course of action.

AFFIDAVIT - A statement in writing made before a notary. The person making the statement makes it under oath on penalty of perjury. An affidavit is generally not admissible into evidence at a trial or fact finding hearing since the affidavit is hearsay.

AFFIRM - The decision by an appellate court to approve the decision of the trial court.

ALLEGATION - A contention or claim that certain matters are true. The recitations of fact in a termination of parental rights petition are called allegations.

AMENDED PETITION - A petition may be amended before the time of hearing. Also a petition in juvenile court may be amended at any time during the proceeding upon the order of the judge. The judge may order an amendment on his own initiative or he may order an amendment upon the request of any interested party. If the amendment results in a substantial departure from the factual allegations contained in the original petition, the judge should order that the case be continued to permit the parties adequate time for preparation concerning the new allegations.

APPOINTED COUNSEL - An attorney who has been selected and is compensated by the court for his representation of an indigent client.

BEYOND A REASONABLE DOUBT - The measure or quantum of proof applied by the court to evidence in deciding disputed questions of fact in a delinquency case and in an adult criminal prosecution. This standard is one of believability and probability. It means that based on the evidence presented the court must be sufficiently convinced of the truth of the alleged facts that any doubt about guilt would be based on conjecture, whimsy, or speculation. Beyond a reasonable doubt is the standard of proof for termination of parental rights hearings in only a few courts.

BURDEN OF PROOF - At the beginning of a trial someone has the responsibility to offer evidence to establish the facts which are in dispute. Typically the plaintiff has this responsibility which, if unfulfilled, will lead the court to dismiss the case. Thus, until the responsibility for producing evidence is met the defendant has no obligation to offer any evidence in the case. This obligation to initially produce evidence in a case is sometimes referred to as the burden of proof.

The term burden of proof is sometimes used also to refer to the requirement that one of the litigants, typically the plaintiff, bears the responsibility of convincing the court measured against a predetermined degree of certainty.

CASE IN CHIEF - Refers to that part of a trial during which testimony and other evidence is presented on behalf of each of the parties. The plaintiff's case in chief consists of the testimony of each of the plaintiff's witnesses called to the stand one after another. At the conclusion of the plaintiff's case in chief the defense presents its case in chief which consists of the testimony of defense witnesses called to testify one after the other.

CIVIL CASES - Those cases where legal rights and obligations are enforced or compensation is sought for injury. They are distinguished from criminal cases in that they do not result in a fine or incarceration, by a different standard of proof ("preponderance" or "clear and convincing" evidence for civil cases; "beyond a reasonable doubt" for criminal cases) and by other procedural variations.

CLEAR AND CONVINCING - A measure of proof applied by courts in certain kinds of non-criminal cases where especially important rights are at stake. The clear and convincing standard is somewhat higher than a preponderance and somewhat lower than the standard of beyond a reasonable doubt.

The clear and convincing standard is applied in juvenile court in some states for termination of parental rights proceedings.

CLERK OF COURT - A court official charged with maintaining the court's official records. Petitions, notices of appeal and other legal documents are filed with the clerk.

CLOSING ARGUMENT - An oral presentation made by counsel for the litigants near the conclusion of the trial after all of the evidence is presented. This is the final opportunity for counsel to summarize the evidence, to urge that certain evidence be believed or disregarded, and to argue the applicability of the law to the facts under consideration. Closing arguments are usually not made in juvenile court since the trial is before a judge without a jury.

COMMITMENT - Generally, a court order directing that a person be delivered or placed into the charge or custody of a third person, agency, or institution.

Children may be committed to the child welfare agency as a result of a juvenile court order or by order of the domestic relations court or probate court.

COMPETENT - Generally means legally qualified. Competent evidence refers to evidence which is legally admissible. Testimony offered which contains inadmissible hearsay statements is a common example of incompetent evidence. A competent witness is one legally qualified to testify.

COMPLAINANT - One who makes a complaint or initiates legal action. One who makes a child abuse report or who files a petition with the court is often referred to as a complainant. The document filed may be called a petition or a complaint.

CONCLUSIONS OF LAW - At the hearing, after the judge has heard and considered all of the evidence and has resolved all disputed questions of fact between the litigants (made findings of fact) he is required to apply the relevant legal standards to those facts to reach a conclusion regarding their legal significance. The determination that the facts bring the child within the jurisdiction of the court, for example, is a conclusion of law.

CONSOLIDATION OF PROCEEDINGS - To unite two or more separate legal actions into a single proceeding.

Generally, separate proceedings may be consolidated into a single proceeding in juvenile court if they involve the same child or family and the same or related issues of fact. For example, in many states, a proceeding upon a petition to terminate parental rights may be consolidated with a proceeding upon a petition for adoption which relates to the same child or family.

CONTEMPT OF COURT - An act which is calculated to embarrass, hinder, or obstruct the court in the administration of justice. Contempt is divided into two kinds: direct and indirect.

Direct contempt is contempt of court within the presence of the court which upsets the orderly processes of the court, e.g., insulting language, acts of violence, etc. Direct contempts may be punished immediately by the court.

Indirect contempt is contempt out of the immediate presence of the court which tends to obstruct or defeat the administration of justice, e.g., failure or refusal to obey a court order. Indirect contempts may only be punished after notice and hearing.

CONTESTED CASE - A case is contested when the litigants are unable to resolve their opposing claims through negotiation, and they resort to a formal trial or hearing in which evidence is presented by both sides and the disputed questions are submitted to the court for determination.

An uncontested case is either one in which the litigants resolve their opposing claims through negotiation and agreement or one in which the defendant or respondent fails to appear at the hearing. In the latter case the plaintiff or moving party is generally required to present sufficient evidence to establish his case.

CONTINUANCE - The postponement of a court proceeding to a subsequent time or date; also called a set over or an adjournment.

COURT - May mean either the processes and participants in the juvenile court including the judge, the juvenile director and his staff, the clerk of the court, and the district attorney, or it may refer solely to the judge.

CREDIBILITY - Those qualities which bear on the trustworthiness or believability of the testimony of a witness.

CROSS EXAMINATION - At a trial or other formal hearing, the questioning by an attorney of a witness for an adverse party at the conclusion of the direct examination. Cross examination may include the use of leading questions.

DEFENDANT - In a civil case, the defendant is the person being sued; in a termination of parental rights case, the parent.

DEMEANOR - The appearance or bearing of a witness from which inferences may be drawn about whether the testimony of the witness is worthy of belief.

DEPENDENCY - Generally, those grounds for juvenile court jurisdiction over a child excluding law violations. More specifically, the jurisdictional basis for juvenile court action that exists due to parental incapacity to provide for the child's support, maintenance, food, clothing, shelter, care or protection. Although the impact on a child may be the same as in a neglect situation, neglect is generally seen in terms of parental failure to provide notwithstanding their ability to do so.

Dependency may either include or exclude status offenders.

DEPOSITION - Testimony of a witness under oath and subject to cross-examination which is taken and recorded prior to the trial. The deposition of a person is generally not admissible into evidence when the person is available to personally appear at the hearing and testify. Depositions are extensively used by litigants in civil cases to determine the testimony of an opponent's witnesses and to discover other evidence prior to the trial. Depositions are not common in most juvenile court proceedings.

Statements made by a witness in a deposition may be used to impeach the witness if the testimony of the witness at the hearing deviates from the statements made in the deposition.

DIRECT EXAMINATION - At a trial or other formal hearing, the questioning of a witness by the party he is testifying for. The general rule is that the attorney for a party may not ask leading questions of his own witnesses on direct examination.

DISCOVERY - Refers to those processes, both formal and informal, which are engaged in by litigants to obtain information regarding the issues in controversy prior to the time of the trial. The modern trend of the law is to avoid surprises at the time of trial by encouraging the exchange of information between the litigants. This narrows the issues that are seriously disputed, encourages settlements, and speeds litigation. Discovery devices include the deposition, court orders to produce documents and objects for inspection, interrogatories, requests for admissions, and court ordered physical or mental examinations of the litigants.

Informal discovery occurs when counsel for the respective parties exchange information regarding the suit without being ordered to do so.

DISPOSITION - The hearing in the juvenile justice process at which the court makes placement and treatment decisions. Disposition may be held only where there has been an adjudication in the jurisdiction hearing that the facts alleged in the petition are true.

The term disposition may also be used to refer to the outcome of any hearing or other act of decision-making.

DOCKET - May refer to (1) the calendar of cases scheduled to be heard by the court, (2) the official abbreviated abstract of the proceedings in a specific case, or (3) a record of the abstracts of proceedings of all cases of a particular kind.

DUE PROCESS - Generally refers to the procedures that must be followed in formal decision-making. The term is derived from the Constitution and has been interpreted by the United States Supreme Court to be synonymous with procedures which are fundamentally fair. The procedures and formalities necessary to satisfy due process requirements vary with the nature of the proceeding and the importance of the individual's rights which are threatened by governmental intervention. Examples of due process rights are the right to notice, to appear, to present evidence, to confront and cross-examine witnesses, and the right to counsel.

EVIDENCE - Evidence refers to the information which is presented to the court to establish the truth or falsity of an allegation of fact.

EX PARTE - Means on "one side only." In a judicial proceeding action is taken ex parte when only one side of the controversy seeks judicial action without giving notice to the opposing party or giving him an opportunity to contest the matter. Generally, ex parte proceedings are only proper in an emergency.

EXHIBIT - Any physical object introduced into evidence at a trial, including letters, photographs, maps, diagrams, records, and instrumentalities of any kind. The introduction of an exhibit into evidence is usually accomplished through the testimony of a witness who authenticates or qualifies the exhibit as actually being what the exhibit purports to be. In certain instances, copies of records may be marked as exhibits and introduced into evidence if they have been properly authenticated.

FILIATION PROCEEDING - A legal proceeding begun by the filing of a petition to establish the paternity of a child born out of wedlock.

FINDINGS OF FACT - In the trial of any law suit where there are disputed questions of fact, the judge (or the jury in a jury trial) must determine from the testimony of witnesses and other evidence presented what factual allegations are true. This determination of disputed factual questions or allegations is termed the finding of facts. An adjudication in the juvenile court consists of a finding of facts relative to the allegations contained in the petition. Findings of fact may be based on the evidence presented or may be based on an acknowledgement to the court by way of a plea on the part of one of the litigants that the allegations are true.

GUARDIAN AD LITEM - A guardian appointed by a court to prosecute or defend on behalf of a minor any law suit to which the child is a party. The role of the guardian ad litem is limited to handling the legal affairs of the child as they relate to the single suit for which he is appointed.

HEARSAY EVIDENCE - The testimony of a witness in which the witness relates statements made to him by some third party. Thus, the witness is testifying to information supplied to him by a third party rather than testifying to information obtained by his first hand observations. Refer to Module 2.4.

IMPEACHMENT - In litigation, impeachment is defined as the process of calling into question the veracity of a witness by showing that the witness is not worthy of belief. A witness may be impeached by the introduction of evidence through other witnesses that contradicts the testimony of the witness being impeached. A witness may also be impeached by the introduction of testimony that the witness has made a statement on an earlier occasion that is contrary to his testimony from the witness stand. A witness may also be impeached through cross examination or through questioning of other witnesses that reveals that the witness is biased, has an interest in the outcome of the litigation, or is otherwise partial and therefore not worthy of belief.

INTERROGATORY - Written questions submitted to a potential adverse witness or a party to litigation for answer under oath. Interrogatories are primarily used as a discovery device to determine the expected testimony and other evidence in the case. Answers to interrogatories may also be used to impeach the witness if his testimony at the hearing deviates from the answers given to the interrogatories.

IN LOCO PARENTIS - Literally means "in the place of a parent." It refers to the role of a non-parent who has, in fact, fulfilled the responsibilities of a parent, e.g., grandparents, relatives, or third persons, or it refers to the role of a non-parent who is legally authorized to fulfill parent-like duties and responsibilities, e.g., school authorities, guardians, foster parents, etc.

JUDGMENT - The final determination of the lawsuit by the trial court.

JURISDICTION - Refers to the legal authority or the legal basis for official action. Jurisdiction over a child means the power of the court to determine the custody of the child to make other decisions affecting his life. The juvenile court obtains jurisdiction over a child only when the child is delinquent or not subject to proper parental care or supervision. State statutes define the precise basis of juvenile court jurisdiction.

In most states the jurisdiction to terminate parental rights may only be determined by a separate, formal fact-finding hearing. Jurisdiction may also refer to the geographic limitations on the court's authority or it may refer to the authority of the court over certain persons.

LEADING QUESTION - A question which by its terms contains or strongly suggests the answer sought by the interrogator. In the trial of a law suit an attorney is not permitted to ask leading questions of his own witnesses on direct examination. To permit such leading questions would be to permit the lawyer to testify through his careful articulation of the details of the occurrence in his questions which the witness would merely adopt through an affirmative answer. Leading questions are permitted by the opposing attorney on cross examination.

MOTION - A request to the court to enter an order or to take some action; may be either written or oral in form. The person making a motion is called the moving party. Motion and petition are sometimes used interchangeably.

NEGLECT - Refers to parental failure to provide the child with a minimal degree of food, shelter, health care, guidance, or protection necessary for the child's physical, mental, or emotional well being.

NOTICE - Informing a person against whom legal proceedings have been initiated that an action has been filed, the nature of the proceeding, the specific charge or factual allegations against which he must defend, and when the hearing on the matter will be held.

Adequate notice is one component of due process, e.g., procedures which are fundamentally fair to the litigants.

Informing a person of certain facts or circumstances and the likely consequences for his failure to act accordingly. For example, advising parents that a course of conduct is likely to result in termination of their parental rights puts the parents "on notice" that their parental rights are in jeopardy.

OBJECTION - A statement made by counsel for one of the litigants during the course of a trial or other hearing to the effect that what is being done or proposed is improper or illegal and that a ruling from the court is requested on the matter.

OPENING STATEMENT - An oral presentation made by counsel for the litigants at the beginning of a trial. Counsel in the opening statement describes the nature of the case before the court and gives a brief synposis of what the evidence will show. This is the first opportunity for the adverse parties to explain their theory of the case and to begin to persuade the court (or the jury) to decide the case in their favor.

ORDER - A directive issued by a court which commands or prohibits some action.

OVERRULE - When the trial court judge in ruling on an objection of a party decides that the objection is without legal basis it is said that the objection is overruled.

PARENS PATRIAE - Generally refers to the authority of the juvenile court or other government body to take action for the protection of children coming within its jurisdiction.

PARTY - A person who is actively involved in a lawsuit or court action and whose rights, duties, obligations, or responsibilities are the subject of litigation.

Party status in a law suit affects what role a person can take to influence the outcome of the suit. Litigants or parties have standing to invoke the court's authority while non-parties play a more passive role.

PETITION - In a juvenile court proceeding, the formal written document filed with the court which contains allegations of fact which, if proven or admitted, will give the juvenile court jurisdiction to enter orders of disposition. The petition must be written and verified.

PETITIONER - The person who presents and signs a petition initiating litigation. More generally, anyone who requests that a court take action (petitions the court or moves the court for an order).

PHYSICAL CUSTODY - Refers to the actual care, control, possession, or supervision of a child without regard to the legal right to exercise that authority over the child. Thus, a person may have physical custody of a child without having legal custody of the same child.

PLAINTIFF - The name of the person who brings an action or files a civil law suit.

PRELIMINARY INQUIRY - Consists of the initial process of the juvenile court from referral of the complaint and culminating in the decision whether a petition will be filed to institute formal court proceedings.

Presumably the preliminary inquiry will consist of three kinds of activities. First, as the result of an investigation, a determination will be made whether the facts of the complaint appear to be true. Second, a determination will be made whether these facts, if true, are legally sufficient to support juvenile court jurisdiction. Third, a determination will be made whether there is sufficient need from the social perspective to justify juvenile court intervention or whether informal adjustment of the problems through counseling and community referrals will resolve the matter.

PREPONDERANCE - The measure or quantum of proof applied by the court to the evidence present in deciding disputed questions of fact. Preponderance is a standard of probability. It means that the court must be convinced that it is more likely than not that an alleged fact is actually a fact based on the evidence presented. Although lawyers speak about the "weight" of the evidence which "preponderates" in favor of one side or the other, this is not a calculation based on the number of witnesses or other mechanical measures. It is a question of credibility and belief. Compare with "clear and convincing" and "beyond a reasonable doubt."

PRIVILEGE - In the law of evidence, a privilege is the right not to testify or to prevent testimony because of certain protected relationships. For example, in some states one spouse cannot be compelled or permitted to testify against the other.

Privileged communications are those communications which receive the protection of the law from disclosure due to their having taken place within the context of a protected relationships.

PROBATIVE - Evidence that tends to prove or disprove any material fact in question.

PROPONENT - One who advocates or argues in favor of some proposition or course of action.

PROOF - The creation of the requisite degree of belief in the mind of the fact finder (judge or jury) in a judicial proceeding based on the evidence presented. Thus, "the allegations of the petition have been proved by a preponderance of the evidence" or whatever the standard of proof is.

PROSECUTE - In its general sense, to commence and carry any kind of litigation to its conclusion.

PUBLICATION - Refers to printing the summons in a newspaper notifying a party about and directing his appearance at a hearing when the whereabouts of the party is unknown.

QUANTUM OF PROOF - Generally refers to the degree to which the judge (or jury) must be convinced by the evidence produced that the allegations in the petition are true. Although the term suggests bulk or weight the real import of the term relates to the convincing power of the evidence. The generally recognized standards for the quantum of proof required are (1) proof by a preponderance; (2) clear and convincing proof; and (3) proof beyond a reasonable doubt.

REBUTTAL - Evidence offered at a trial to refute the testimony of an opponent's witnesses.

RELEASE AND SURRENDER - The procedure through which a parent may voluntarily transfer the guardianship and control of his child to a child caring agency for the purpose of placing the child for adoption; also referred to as relinquishment.

RELEVANT - Refers to the relationship between two facts or propositions such that the establishment of one leads logically to the establishment of the other. All evidence presented must be relevant to some issue in the case or it will be held to be inadmissible and excluded from consideration by the finder of fact (judge or jury).

RESPONDENT - In certain kinds of law suits the person who is proceeded against is called the respondent rather than the defendant.

When a case is appealed, the person taking the appeal is called the appellant, and the person who opposes the appeal is referred to as the appellee or the respondent.

RETAINED COUNSEL - An attorney who is privately hired by a litigant to represent his interests.

REVERSE - The decision of an appellate court which overturns an incorrect decision of the trial court. The appellate court is said to have reversed the decision of the trial court.

REVIEW HEARING - In juvenile court, periodic review hearings may be held subsequent to the disposition hearing to apprise the court of the progress of the dispositional plan or to seek modification of the dispositional order.

SEQUESTER - In order to prevent a witness from tailoring his testimony to the testimony of other witnesses, he may be excluded from the hearing while the other witnesses testify and also ordered not to discuss his testimony with other witnesses. Such an order is called an order that the witness be sequestered.

STATUS OFFENSE - Refers to an act done by a child which constitutes one basis for juvenile court jurisdiction and arises out of the status of childhood. Status offenses are generally thought to include acts of parental disobedience, truancy, violation of curfew laws, and running away from home.

STATUTE - Law enacted by the legislature.

STIPULATION - Refers to an agreement entered into by the attorneys of opposing sides. A stipulation may relate to procedural matters within the course of the law suit, e.g., a stipulation that certain material will be admitted into evidence without the requirements of formal proof, or it may incorporate a resolution of the entire matter under litigation.

SUBPOENA - Refers to the legal document issued by the court which directs witnesses to appear and give testimony. There are two kinds of subpoenas:

(1) subpoena calling for the appearance of the witness; and (2) subpoena duces tecum which directs that persons who have records or other documents in their possession appear and bring the records or documents with them.

SUMMONS - The legal document issued by the court and served on a party to proceeding which notifies him of the nature of the proceeding, the time and date of the court hearing, and that he is required to appear at the hearing.

SUSTAIN - To uphold. In trial practice when an objection is made by one litigant to a question propounded to a witness by the other litigant, the court must rule on the legality or propriety of the question. If the judge decides that the objection is correct, the objection is sustained.

TEMPORARY CUSTODY - Refers to the status of a child who has been officially removed from the care, control, and supervision of his parent or other person who is acting in loco parentis without his consent or without the consent of the child. This status continues until the child is released from custody or after adjudication and disposition the child is placed with a third person.

TERMINATION OF PARENTAL RIGHTS - Means the extinguishment of all legal ties between a parent and his child. Parental rights may be extinguished by consent of the parents or involuntarily by order of the court.

TESTIMONY - Evidence given orally by a witness under oath, in contrast to evidence derived from a written document or other physical object.

VACATED - To annul, set aside, to cancel, or to rescind. In requesting a trial court to change its order a party may file a motion to vacate all or a portion of the court's order. When the Court of Appeals overturns a decision of a trial court judge, the court of appeals vacates the order of the trial court.

VENUE - Juvenile court venue refers to the county or counties within which a law suit may be initiated based on such factors as where the parents reside, where the child resides, or where the child is found.

WAIVER - The knowing and voluntary giving up of a known right or such conduct as warrants an inference that the right has thus been given up.